

Ending Impunity for Labour Trafficking
and Bonded Labour

A Guide to Good Practices



Ask those who are unemployed whether what are called Fundamental Rights are of any value to them. If a person who is unemployed is offered a choice between a job of some sort, with some sort of wages, with no fixed hours of labour and with an interdict on joining a union and the exercise of his right to freedom of speech, association, religion, etc., can there be any doubt as to what his choice will be? How can it be otherwise? The fear of starvation, the fear of losing a house, the fear of losing savings, if any, the fear of being compelled to take children away from school, the fear of having to be a burden on public charity, the fear of having to be burned or buried at public cost are factors too strong to permit a man to stand out for his fundamental rights. The unemployed are thus compelled to relinquish their fundamental rights for the sake of securing the privilege to work and to subsist.

B Shiva Rao, The Framing of India’s Constitution: Select Documents, 100

Foreword

Is it not disgraceful and disgusting that even after 72 years of political independence and 66 years of economic planning, labour trafficking and bonded labour are not only widely prevalent but deeply rampant?

As response, we have enacted a plethora of robust laws such as the Bonded Labour System (Abolition) Act, 1976 and Section 370 of the Indian Penal Code, 1860. Also, there is a constitutional provision of Article 23 which prohibits trafficking in human beings and forced labour. Understandably, while the beauty of a law may consist in its wording, the utility of a law lies in the effective implementation of its intent as well as content. However, we have failed in this aspect miserably. The reality check reveals that scores and scores of people remain unprotected by law. They live inhuman and exploitative lives working in brick kilns, garment factories, cotton farms, stone quarries, bangle units, as also in agricultural lands or as herders. Cases of people being trafficked for labour, sex or for other wrong purposes are growing day in, day out.

Therefore, there is a greater need for multi-stakeholder involvement and a multipronged approach to ensure that our ecosystem not only protects our people but also promotes their well-being. Obviously, awareness, attitudinal change and proactive action can go a long way to solving this formidable problem.

Based on my personal experience as a practicing lawyer and a judge, I would like to stress that protection can be ensured at two different stages viz preventive and judicial. At the preventive stage awareness of local communities about crimes like trafficking and bonded labour is important. Reducing vulnerability through appropriate livelihood, strengthening of communities, and social organisations are also significant.

As far as judiciary is concerned, the role of criminal justice system and the law enforcement agency hardly need elaboration. Perpetrators must not only be held accountable but must be given stringent punishment for their crimes forthwith and without discrimination.

Not less decisive is rehabilitation of released bonded labourers. Additionally, it must be ensured that they do not get trapped again. For this empathisers, lawyers, social activists and other stakeholders must work together and synergistically.

The present compendium, *Ending Impunity for Labour Trafficking and Bonded Labour: A Guide to Good Practices* captures highly useful learnings, strategies, ideas and experiences of practitioners working for the cause of bonded labourers in India.

Indeed, I am thankful for the commendable efforts of International Justice Mission in holding a national consultation of lawyers for social benefit. It is equally praiseworthy that the proceedings and findings of the consultation have been recorded into this compendium for a wider circulation and utilisation.

I sincerely wish and hope that the practical learnings and experiences contained in this compendium will be used widely by empathisers as well as enthusiasts for the well-being of our citizens.

Justice Pana Chand Jain (Retd.)
Former Judge, Rajasthan High Court

Foreword

Without strong watchdog institutions, impunity becomes the very foundation upon which systems of corruption are built.

—Rigoberta Menchú, Nobel Prize laureate

According to the Global Slavery Index, as much as 24.9 million people are forced labour in the world, among them, almost 71% are female. Our country is not an exception for this practice; in fact the system of bonded labour, which is the worst form of forced labour is prevalent in many parts of the country. A large section of the workforce in India is vulnerable to a life of debt bondage, wage theft, and other forms of exploitation. They lead miserable lives, working in brick kilns, garment factories, cotton farms, stone quarries and in agricultural lands. They are subjected to the worst form of human rights violation, deprived of basic amenities and live a life akin to slavery.

Being victims of the worse form of human rights violation, they are entitled to ‘reparations’ which include ensuring ‘satisfaction’ of the victims. The most prudent means to provide ‘satisfaction’ to the victims is to ensure effective investigation and prosecution. This can only be achieved once we are able to end the culture of impunity, which is deeply rooted in our system. The State, being the most powerful stakeholder, needs to take the lead in the process, but the attainment of the goal is dependent upon the active participation of other stakeholders too.

The concern today is not over an absence of laws, but the lack of strict enforcement of the existing laws to deter perpetrators who exploit labourers, including trafficked children who are coerced to live and work in poor conditions. In order to break the impunity of perpetrators, there is a need of involving stakeholders from various fields and to devise a multi-pronged approach to ensure our systems, structures and societies protect workers.

I am delighted to learn about the excellent efforts of the International Justice Mission (IJM) in holding a joint consultation on bonded labour and trafficking with other major stakeholders. Moreover, I am delighted that they have taken a step further by developing these learnings into a compendium of good practices. This compendium provides a useful compilation of innovative approaches, cases and practical strategies that may be of help to lawyers, civil society organisations, and other stakeholders representing victims of bonded labour and trafficking.

My sincere desire is that we can learn from the past, learn from one another, share resources, knowledge and expertise in the fight against bonded labour and human trafficking. I hope that everyone who reads this compendium of good practices will be equipped in new ways to tackle the problem at hand. And lastly, let us remember our beneficiaries – the workmen, that this compendium will serve to further their interests and wellbeing.

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We would also like to thank Dr Lakshmidhar Mishra, IAS (Retd) for his constant support.

This guide represents shared experiences and learnings, acquired after years of sustained efforts to combat bonded labour and human trafficking. We hope that this will benefit all stakeholders working on this issue and, more importantly, the labourers in bondage for whose benefit policies are designed to eliminate trafficking.



Introduction

The Bonded Labour System (Abolition) Act, 1976, was introduced to give effect to the mandate against forced labour, laid out in Article 23(1) of the Constitution of India, 1950. The Act provides for the identification, release and rehabilitation of bonded labourers. It also criminalises the act of advancing any bonded debt and compelling any person to render services under the bonded labour system. The Act, designed to provide speedy justice to victims, however, suffers from inadequate implementation. An overburdened and under-resourced police force, witness intimidation and inordinate delays in cases are just some of the obstacles standing in the way of a fair and just conviction. Despite this, there are success stories across the country of justice being served. More often than not, this is a result of effective collaboration amongst criminal justice officials and Civil Society Organisations.

Hence, a national consultation on bonded labour was organised to strengthen partnership among these community organisations, lawyers and various other stakeholders, and to create an opportunity for them to address challenges and discuss viable legal strategies that could be used to increase accountability and end criminal impunity for offenders. 76 lawyers representing victims of bonded labour and human rights violations as well as representatives from NGOs working across the country participated in the consultation. This report sets forth the legal strategies that were employed by them in their effort to combat the bonded labour system and labour trafficking. These include adopting a multidisciplinary approach by collaborating with key stakeholders, seeking pecuniary penalties, using advanced technology and conducting workshops for government and judicial officers. The objective of this report is to consolidate these good practices for the purpose of achieving offender accountability in bonded labour and labour trafficking cases.

Human trafficking being an organised crime is often characterised by powerful accused who have substantial resources at their disposal to engage the best legal minds of the business to defend them. A hearing in court where the accused is represented by an experienced lawyer and his volley of juniors and assistants while the state is represented by an overburdened prosecutor is not an uncommon sight. In addition to this, the concept of victim representation in criminal proceedings is only slowly beginning to pick up. This book is an attempt to strengthen prosecution by equipping the lawyers representing the survivors of bonded labour.





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Legal Intervention

... courts are not meant only for the rich and the well-to-do, for the landlord and the gentry, for the business magnate and the industrial tycoon, but they exist also for the poor and the down-trodden, the have-nots and the handicapped and the half-hungry millions of our countrymen.

Justice P.N. Bhagwati, People's Union for Democratic Rights v. Union of India, 1982

The greatest value of human life is best represented in the recognition of fundamental rights, and in fully enabling people to enjoy and exercise these rights to the extent that preserves their humanity and respects their civility. Life would be meaningless if individuals were not able to practice their natural rights or adopt the political opinions they believed in. Moreover, life would be unendurable if individuals were unable to enjoy security in their communities. The rights of individuals would be without value if no legal system were able to play an active role in their protection. The Indian Constitution guarantees fundamental rights to every citizen and judiciary being the custodian of Indian Constitution has the sole responsibility to ensure that no citizen's fundamental right is violated. The system of bonded labour is nothing but exploitation of labour. The judicial process emanating therefrom provides for the effective implementation of the law, for the protection of the rights of individuals and groups, and sets a standard for the subsequent equitable enforcement of the law. Consequently, human rights receive effective protection in the courts. Therefore, one of the vital ways to preserve human rights is through legal intervention.

This topic discusses the various methods through which legal intervention can be made more effective. These include identifying cases to bring offenders and their victims under the control and protection of legal and social institutions, addressing evidentiary problems in criminal prosecution and initiating civil penalty proceedings.



I. Expeditious Intervention for Rescue of Bonded Labourers

Day and night, we made bricks. The owner would not allow us to leave. Today, I am happy to be free.

Meera Bai, rescued bonded labourer, Rajasthan

Victims of bonded labour and human trafficking face unrelenting hardships in the form of terrible living conditions, restrictions on movement, long working hours, no access to healthcare and even physical and verbal abuse. Rescue, therefore, becomes exigent. Rescue, however, doesn't end with release of the victims from the worksite. It also involves the recording of victim's statements; arrangements with regard to food, shelter, transportation and medical needs of the victims; issuance of release certificate and initial rehabilitation amount; and registration of an FIR.

While the legal response to the offences of trafficking for forced labour has to be primarily led by the police, district authorities and the labour department, a swift and victim-centric response is possible only through concerted efforts of various agencies.

This chapter discusses the different ways in which law enforcement response to trafficking can be strengthened, and the various schemes that aim to enhance and institutionalise cooperation between law enforcement agencies, concerned government departments and NGOs for the purpose of combatting trafficking.



The District Magistrate is the authority who has been charged with the task of identifying and eradicating situations of forced labour under the Bonded Labour System (Abolition) Act, 1976.

Section 12, Bonded Labour System (Abolition) Act, 1976

Duty of the district magistrate and the officers authorised by him—it shall be the duty of every district magistrate and every officer specified by him under Section 10 to inquire whether, after the commencement of this act, any bonded labour system or any other form of forced labour is being enforced by, or on behalf of, any person resident within the local limits of his jurisdiction and if, as a result of such enquiry, any person is found to be enforcing the bonded labour system or any other system of forced labour, he shall forthwith take such action as may be necessary to eradicate the enforcement of such forced labour.

To ensure immediate intervention, every offence under the act has been made a cognisable offence.

Section 22, Bonded Labour System (Abolition) Act, 1976

Cognisance of offences—every offence under this act shall be cognisable and bailable.

The standard operating procedure for Identification and Rescue of Bonded Labourer and Prosecution of Offender (SOP), 2017 [attached as Annexure A] provides that on receipt of a complaint pertaining to any activity of bonded labour, the district magistrate, sub-divisional magistrate or police shall form a rescue team to ensure the release of the victims. The SOP further states that the rescue team shall include the district magistrate/sub-divisional magistrate, police officers, labour officer, the complainant, two independent witnesses, members of civil society organisations and any other person.¹

At times, however, there may be a delay in response from the authorities. In such circumstances, the following approaches may be undertaken to initiate rescue:

a. Initiating a Court-led Rescue under S. 97 of the Code of Criminal Procedure, 1973

One may seek the intervention of the local court, under S. 97 of the Code of Criminal Procedure, 1973.

Section 97, The Code of Criminal Procedure, 1973

Search for persons wrongfully confined—if any district magistrate, sub-divisional magistrate or magistrate of the first class has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a magistrate, who shall make such order as in the circumstances of the case seems proper.

Case from the field:

In a case where an application under S.97 of the Code of Criminal Procedure, 1973 was filed, the learned court of the judicial magistrate formed a three-member commission to execute a search warrant at a worksite within 48 hours. While two of the advocates on the commission were nominated by the petitioner himself, the third was a legal aid counsel appointed by the court. The advocate commissioners identified about 45 labourers, including 13 children. On questioning them, it was found that the labourers were being confined and forced to work at the premises without basic facilities, until they could pay off their debt.

¹ Standard Operating Procedure for Identification and Rescue of Bonded Labourer and Prosecution of Offender [F.No. S-11012/01/2015-BL (Pt.)], Ministry of Labour and Employment, 17 August 2017, p. 2.2.

They were then immediately produced before the Magistrate who directed the labour commissioner to provide necessary assistance to the survivors for their rehabilitation. An enquiry was also carried out by the sub-divisional magistrate after which release certificates were issued to the survivors as provided under the Central Sector Scheme for Rehabilitation of Bonded Labourer, 2016 and the Bonded Labour System (Abolition) Act, 1976. Thereafter, an FIR was registered by the police under S. 370 (iii)(iv)(v) of the Indian Penal Code; S. 3(2)(v) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act and S. 16, S. 17, S. 18 of the Bonded Labour System (Abolition) Act.

As a defence lawyer, I have used Section 97 multiple times to seek the release of an accused held in wrongful custody. Today, I invoke the same law to initiate rescue of victims of bonded labour.

Advocate Brundadhar Rao, Telangana

b. Approaching the State Legal Services Authority for facilitating rescue

The assistance of the State Legal Services Authority (SLSA) or the District Legal Services Authority (DLSA) constituted under S. 6 and S. 9 of the Legal Services Authorities Act, 1987 may also be sought for conducting rescue. The SLSA and the DLSA, under Section 7.2 of the Legal Services to the Workers in the Unorganised Sector Scheme, 2015 has been assigned the task of identifying and extending legal services to unorganised workers, which includes child labourers and bonded labourers. The SLSA and DLSA must aid their rescue, release and rehabilitation.²

Section 7.2, National Legal Services Authority (Legal Services to the Workers in the Unorganised Sector) Scheme, 2015

In the process of identification, special efforts should also be made to identify any child labour or bonded labour and in case any workers in the said prohibited categories are found, the Legal Services Authorities shall inform the concerned authorities and facilitate their rescue, release and rehabilitation, as provided under the Bonded Labour System (Abolition) Act 1976, The Child Labour (Prohibition and Regulation) Act 1986 and Juvenile Justice Act 2000.

Case from the field:

In a case where an NGO wrote to the SLSA seeking their assistance for a rescue, the SLSA was quick to respond. It wrote to the District Collector, who, in turn, instructed the Sub-Divisional Magistrate, the Tehsildar and the DLSA to form a team and conduct the rescue.

c. Involving Child Welfare Committee in the rescue of child bonded labourers

It is not uncommon for children to work in conditions of servitude in order to pay off a debt incurred by their relatives or guardians, usually by a parent. In order to ensure coordinated and convergent action of stakeholders and strengthen response to violation of child labour, the Ministry of Labour and Employment issued a standard operating procedure for enforcement of The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 in 2017. Recognising the Child Welfare Committee as one of the stakeholders, the SOP mandates that the committee be a part of the rescue team for rescue of child bonded labourers.³

Section 5.1, standard operating procedure for enforcement of The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, Ministry of Labour and Employment, Government of India, 2017

² Legal Services to the Workers in the Unorganised Sector Scheme, National Legal Services Authority, 2015, S. 7.2.

³ Standard Operating Procedure for Enforcement of The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, Ministry of Labour and Employment, September 2017, S. 5.1.



Constitution of Rescue Teams

A comprehensive rescue team consisting of a spectrum of stakeholders shall be constituted for the rescue of child labourer or adolescent labourer in hazardous employment. Given below is a suggestive list of law enforcement agencies, independent witnesses and other persons with valuable skill sets to be included in a rescue team.

1. Police/Special Juvenile Police Unit;
2. District nodal officer or labour inspectors;
3. District magistrate or the sub-divisional magistrate or nominee of the DM (A case of child labour could also be a case of bonded labour);
4. CWCs/DCPO/Members of village level child protection committees;
5. Representative of District Legal Services Authority;
6. Women police officers;
7. NGOs, representative of child helpline services; and
8. Translators, counselors, etc.

d. Seeking intervention of Anti Human-Trafficking Units for rescue in cases of trafficking for forced labour

The term, human trafficking, was traditionally associated with the movement of women and girls into sexual exploitation. Today, however, trafficking is a wider concept that includes many other forms of exploitation other than sexual exploitation. The Ministry of Home Affairs Advisory on Preventing and Combating Human Trafficking in India, 2009 [attached as Annexure B] described trafficking of human beings as a crime committed in order to target, lead or drive a human being into an exploitative situation with the aim to make profits. Such exploitation may take many forms, for example commercial sexual exploitation, child labour, forced labour, bonded labour or illegal organ removal, etc.⁴

S. 370 of the Indian Penal Code, 1860, introduced through the Criminal Law (Amendment) Act, 2013, provides a comprehensive definition of trafficking. Recognising the fact that poverty and unemployment make labourers vulnerable to unsafe migration and exploitation, S. 370 provides that consent of the victim is immaterial in a determination of the offence of trafficking.

Section 370, Indian Penal Code, 1860

Trafficking of person. - (1) Whoever, for the purpose of exploitation,

- (a) recruits,
- (b) transports,
- (c) harbours,
- (d) transfers or
- (e) receives, a person or persons, by—
 - using threats,
 - using force or any other form of coercion,
 - abduction,
 - practising fraud or deception,
 - abuse of power, or
 - inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

⁴ Advisory on Preventing and Combating Human Trafficking in India [F.NO.15011/6/2009-ATC (Advisory)], Ministry of Home Affairs, 9 September 2009.



Explanation 1 — The expression ‘exploitation’ shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude or the forced removal of organs.

Explanation 2 — The consent of the victim is immaterial in a determination of the offence of trafficking.

The Ministry of Home Affairs, in order to promote joint response by all stakeholders has provided for the establishment of integrated Anti Human-Trafficking Units (IAHTUs) in the Comprehensive Scheme for Establishment of integrated Anti Human-Trafficking Units and capacity building of responders, including training of trainers for strengthening the law enforcement response to human trafficking in India Plan⁵.

Section 6(b), Comprehensive Scheme for establishment of integrated Anti Human-Trafficking Units and capacity building of responders, including training of trainers for strengthening the law enforcement response to human trafficking in India Plan, Ministry of Home Affairs, Government of India

AHTUs will be responsible for:

Bringing about inter-departmental collaboration among the police and all other government agencies and departments, such as women and child, labour, health, etc;

Conducting rescue operations with the assistance of NGOs whenever they receive information about trafficking activities either from police sources, or NGOs or civil society.

FIR in a case of trafficking can be registered at source, transit or destination suo moto or on a complaint by AHTU, victim, family of victim, NGO, district magistrate (DM)/sub divisional magistrate (SDM) or any person.⁶

Section 5.1, Standard operating procedures on Investigation of Crimes of Trafficking for Forced Labour, Published by United Nations Office on Drugs and Crime, 2008

Where to register FIR

Trafficking is a continuing offence. The provisions of IPC with respect to offences of abduction/kidnapping provide for registration of FIR at any place from the source to the destination. Similarly, FIR could be registered at the place of demand/destination area/place of employment (mostly the place of rescue) or the place of transit, or at the place where the person was trafficked from (source area).

Case from the field:

In a case of labour trafficking, spanning across 6 states, 55 labourers belonging to 20 families were trafficked from Telangana to Rajasthan in December 2015. The labourers worked long hours, had no freedom of movement and were kept under constant surveillance. An FIR was registered with the Telangana police i.e. at the source state and a rescue was scheduled, with help from a Telangana based NGO. Another organisation working in Rajasthan to combat bonded labour, stepped in to support the rescue. However just days before the planned rescue, acting on a tip-off, the trafficker forcibly transported the victims out of Rajasthan. The victims were held captive and on the road to an unknown destination.

⁵ Comprehensive Scheme for Establishment of integrated Anti Human Trafficking Units and capacity building of responders, including Training of Trainers for strengthening the law enforcement response to human trafficking in India Plan, Ministry of Home Affairs, S. 6(b).

⁶ Standard Operating Procedures on Investigation of Crimes of Trafficking for Forced Labour, United Nations Office on Drugs and Crime and Government of India, 2008, S. 5.1.



In turn, the Telangana police used technology to locate the trafficker. However, due to the fact that the trafficker was on the move, it was especially important to mobilise support across the neighbouring states. Whilst on the move, the labourers had no understanding of where they were or where they were going because the trafficker had confiscated their mobile phones. Furthermore, the tracking mechanism displayed how the trafficker was determinedly seeking to avoid being caught. Finally, after 4 days, the truck holding the survivors was traced and intercepted in Karnataka by the Anti Human-Trafficking Unit of the CID team of Telangana. The police then conducted a rescue operation and immediately arrested the trafficker.

The success of this rescue also demonstrates that inter-departmental collaboration between the government, police and civil society organisations across states is vital for combatting human trafficking.



Rescued bonded labourers walking towards freedom

2. Effective Investigation into a Case of Bonded Labour or Trafficking for Forced Labour

To provide fair, proper and unquestionable investigation is the obligation of the investigating agency and the court in its supervisory capacity is required to ensure the same.

Justice Swatanter Kumar, Vinay Tyagi v. Irshad Ali, 2012

Over thousands of people in India, are trafficked every year to places across the country, where they are held in debt bondage.⁷ The nature of this crime is complex since the process involves many offenders and the scene of the crime spreads across boundaries and jurisdictions. Investigation into an organised crime such as trafficking would, therefore, require law enforcement to employ proactive strategies and special investigative techniques.

This chapter discusses the essential steps that law enforcement officials must take to ensure that the evidence obtained passes judicial scrutiny during trial. Steps include filing appropriate charges, questioning all materials witnesses and recording their statements, collecting evidence properly and ensuring that the charge sheet accurately reflects the circumstances of the case and the evidence obtained.



Government officials conducting an inquiry into the offence of bonded labour

⁷ National Crime Records Bureau 2017, Crime in India 2016 Statistics, Ministry of Home Affairs, pg. 517.



a. Investigation into the offenders

Trafficking involves multiple elements such as recruiting, kidnapping, transporting, selling, buying, wrongful confinement, assault, etc. The role that each offender played must be identified such as that of a spotter, recruiter, seller, purchaser, contractor, transporter, abuser, custodian, exploiter, harbourer, etc.

b. Ingredients of a complaint

On receiving any information pertaining to a situation of bonded labour in an area, one may file a complaint. The complaint must include all relevant details known to the informant and must answer these five questions:

Who—identity of the victims; identity of the complainant, if separate

When—timeline of events

Where—details of source, transit and destination area and the route followed by the traffickers

What—charges to be filed. The complaint must include appropriate sections of the Bonded Labour System (Abolition) Act, 1976; and if applicable, sections of Indian Penal Code, 1860, The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 and Juvenile Justice (Care and Protection of Children) Act, 2015.

How—how was the recruitment done; what was the means used—inducement/threat/force; and what were the exploitative living and working conditions of the labourer that qualify the case as bonded labour.

c. Essentials of a charge sheet

On completion of investigation, if the police conclude that an offence has been committed, it must file a report under S. 173 (2) of the Code of Criminal Procedure, 1973, commonly referred to as a charge sheet or a challan. The charge sheet sets out the identities of the accused persons, the nature of the accusations and the evidence obtained during the investigation. It is a crucial document because it forms the basis for subsequent criminal proceedings against the accused. Once the charge sheet has been submitted to a court of law, prosecution proceedings against the accused are initiated.

A charge sheet must be free of errors and the narrative contained in it must accurately reflect the case.

A charge sheet must include:

1. All relevant sections of Acts;
2. Identities of the accused;
3. The names of witnesses whose statements have been recorded under S.161 or S.164 of the Code of Criminal Procedure, 1973;
4. The names of the *Panch* witnesses and other important witnesses;
5. Vital documents relevant to the charges:
 - a. Release certificate issued under Para 3.4 of the Standard Operating Procedure for Identification and Rescue of Bonded Labourer and Prosecution of Offender, 2017⁸ and S. 12 of the Bonded Labour System (Abolition) Act, 1976;
 - b. Bonded Labour Inquiry Forms as under Para 3.3 of the Standard Operating Procedure for Identification and Rescue of Bonded Labourer and Prosecution of Offender, 2017;⁹
 - c. Executive release order;
 - d. Receipt showing grant of initial rehabilitation amount under Para 3.5 of the Standard Operating Procedure for Identification and Rescue of Bonded Labourer and Prosecution of Offender, 2017¹⁰ read with the Central Sector Scheme for Rehabilitation of Bonded Labourer, 2016¹¹ [attached as Annexure C];

⁸ Standard Operating Procedure for Identification and Rescue of Bonded Labourer and Prosecution of Offender [F.No. S-11012/01/2015-BL (Pt.)], Ministry of Labour and Employment, 17 August 2017, p 3.4.

⁹ Standard Operating Procedure for Identification and Rescue of Bonded Labourer and Prosecution of Offender [F.No. S-11012/01/2015-BL (Pt.)], Ministry of Labour and Employment, 17 August 2017, p.3.3.

¹⁰ Standard Operating Procedure for Identification and Rescue of Bonded Labourer and Prosecution of Offender [F.No. S-11012/01/2015-BL (Pt.)], Ministry of Labour and Employment, 17 August 2017, p. 3.5.

¹¹ Central Sector Scheme for Rehabilitation of Bonded Labourer, [F. No. S-11012/01/2015-BL], Ministry of Labour and Employment, 18 May 2016.



- e. Sub divisional magistrate's report to district magistrates;
- f. Documents relating to proceedings initiated under The Minimum Wages Act, 1948 and The Payment of Wages Act, 1936 for recovery of wages;
- g. Documents establishing debt incurred by the victim seized from the accused at the time of search;
- h. Documents collected by the concerned Labour Department including:
 - i. Register of wages to be maintained by the employer under S. 18 of The Minimum Wages Act, 1948;
 - ii. Muster roll to be maintained by the employer under S. 26(5) of The Minimum Wages (Central) Rules, 1950;
 - iii. Register of wages to be maintained by the employer under S. 13A of The Payment of Wages Act, 1936;
 - iv. Certificate of registration issued to employer under S. 6 of The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;
 - v. License to be obtained under S. 8 of The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, if the accused falls within the definition of contractor laid down under the Act;
 - vi. Certificate of registration issued to employer under S. 7 of The Contract Labour (Regulation and Abolition) Act, 1970;
 - vii. License to be obtained under S. 12 of The Contract Labour (Regulation and Abolition) Act, 1970, if the accused falls within the definition of contractor laid down under the Act;
 - viii. Registers and records to be maintained under S. 52 of the The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980, if the accused falls within the definition of contractor laid down under the Act;
 - ix. Registers and records to be maintained under S. 78 of The Contract Labour (Regulation and Abolition) Rules, 1971, if the accused falls within the definition of contractor laid down under the Act.

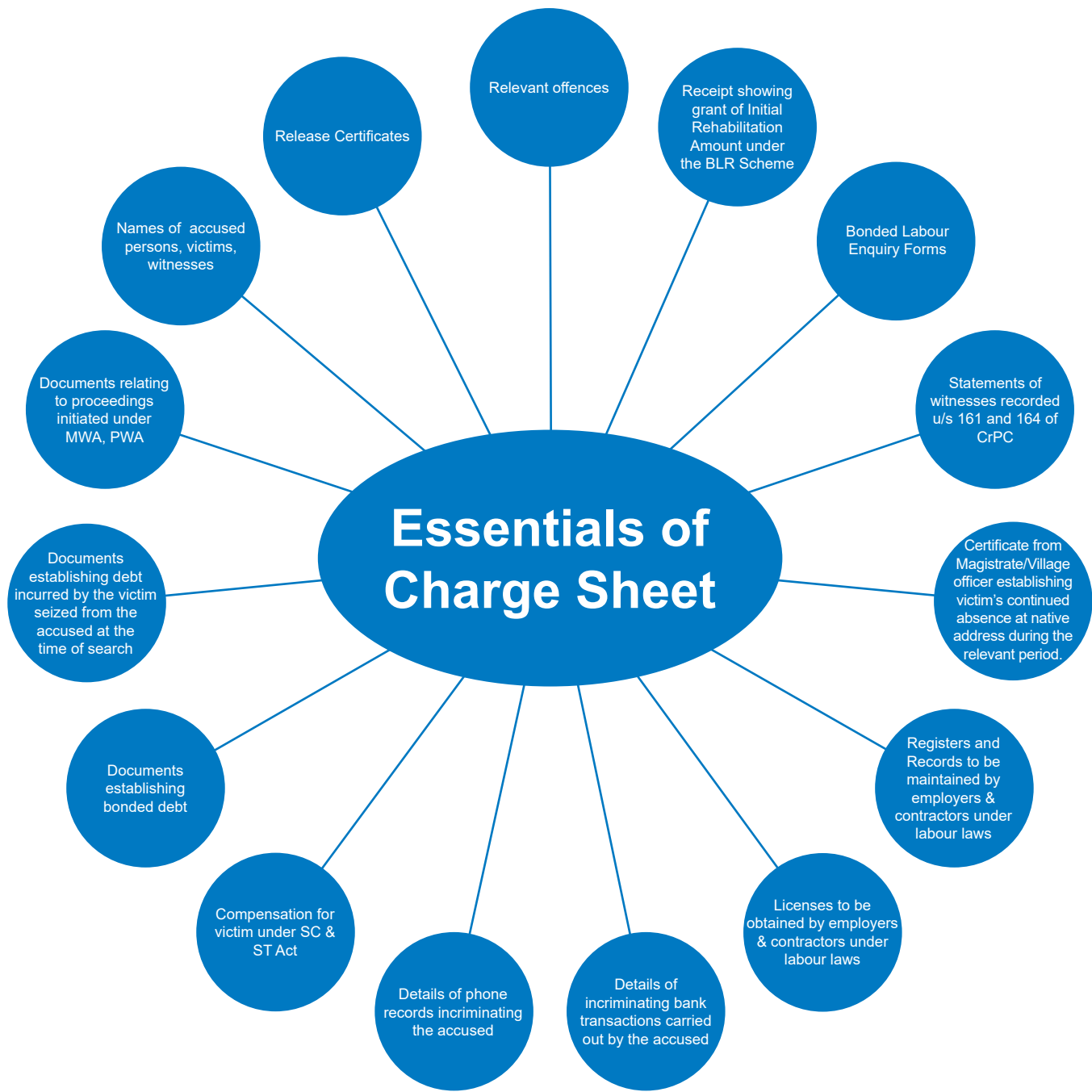
The Director General of Police, Tamil Nadu issued a Circular (Rc. No. 146487/HR Cell/2016) [attached as Annexure D] instructing all police officials in the State of Tamil Nadu dealing with cases falling under the Bonded Labour System (Abolition) Act, 1976 to unfailingly file relevant documents along with the charge sheet/final report submitted before the court.

- 6. Mapping of exploitation i.e. the survivor's statement must outline the oppressive living and working conditions she/he were subjected to. If there was denial of basic freedoms, use or threat of violence towards victims and/or family members, confiscation of passports and/or other identification documents, the statement must contain those details;
- 7. Details of incriminating bank transactions carried out by the accused;
- 8. If phone of the accused is tracked, details relating to the same; and
- 9. Compensation a victim is entitled to under S. 3 (1) (h) or S. 3(2) (v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 read with Rule 12(4) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Rules, 1995. As per the Schedule to Annexure-I of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Rules, 1995, 25 per cent of the compensation a victim is entitled to shall be granted when the FIR is filed and 50 per cent of the compensation shall be granted when the charge sheet is sent to the Court.



The relevant entry in Annexure I of the Rules, 1995 is given below—

ANNEXURE I		
NORMS FOR RELIEF AMOUNT		
8.	Begar or other forms of forced or bonded labour [Section (3)(1)(h) of the Act]	One lakh rupees to the victim. Payment to be made as follows: (i) Payment of 25 per cent. First Information Report (FIR) stage; (ii) 50 per cent when the charge sheet is sent to the court; (iii) 25 per cent when the accused are convicted by the lower court.
40.	Committing offences under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more [Section 3(2)(v) of the Act]	Four lakh rupees to the victim or his dependents. The amount would vary if specifically provided otherwise by this Schedule. Payment to be made as follows: (i) Payment of 25 per cent. First Information Report (FIR) stage; (ii) 50 per cent when the charge sheet is sent to the court; (iii) 25 per cent when the accused are convicted by the lower court.



3. Rendering Legal Assistance to Survivors

Judicial justice, with procedural intricacies, legal submissions and critical examination of evidence, leans upon professional expertise; and a failure of equal justice under the law is on the cards where such supportive skill is absent for one side.

Justice Krishna Iyer, *M. Hoskot v. State of Maharashtra*, 1978

Victims of bonded labour and trafficking face considerable difficulties in accessing justice. Prosecutors assigned to their cases are generally overburdened and under-resourced. Since they have little time to meet with victims, they may not even be aware of all the factual information relating to the case. Lack of effective legal assistance and access to high-quality legal advice significantly affects the outcome of a case. The Code of Criminal Procedure, 1973, in order to facilitate a victim's access to justice, enables a victim to engage a legal counsel who can work in unison with the public prosecutor. This chapter discusses the important role the victim's lawyer could play during the trial, and the measures that the lawyer must take to ensure that the trial is conducted in accordance with settled principles of law.



a. Filing an application under S. 301 read with proviso to S. 24(8) of the Code of Criminal Procedure, 1973

The provision under Section 24(8) of the Code of Criminal Procedure, 1973, was introduced in 2009 in recognition of a victim's right to be heard in a criminal proceeding. The provision allows the victim to engage an advocate to represent him/her during all proceedings in a criminal trial. Such an advocate can assist the Public Prosecutor in the prosecution of the case, and also has the right to submit written arguments.

Section 301, The Code of Criminal Procedure, 1973 Appearance by Public Prosecutors—

1. The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.
2. If in any such case, any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.

Section 24 (8), The Code of Criminal Procedure, 1973

The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor:

[Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.]

The Madras High Court in *Sathyavani Ponrani v. Samuel Raj* [2010 (4) CTC 833] stated that the definition of 'victim' is restricted to not only the victim, but also includes anybody associated with the victim.

Case excerpt:

Para 53, *Sathyavani Ponrani v. Samuel Raj* [2010 (4) CTC 833]

—To participate in a Criminal proceeding, one need not be a victim alone. The word 'victim' will have to be given a wider interpretation to mean not only the victim but any one who is associated or assisting the victim, or who sets the Criminal law into motion, or even in a given case a third party with Public interest. In a case where the victim is no more it cannot be said that no application can be filed by any body seeking to invoke the Proviso to Section 24 (8) of the Code of Criminal Procedure.

The Court in *Sathyavani* also elaborated on the role that the victim's counsel would play during the trial.

Case excerpt:

Para 24, *Sathyavani Ponrani v. Samuel Raj* [2010 (4) CTC 833]

..... an Advocate so engaged has to perform three different roles. He has to render assistance to the victim who engaged him to assist the prosecution, secondly to assist the prosecution by assisting the Public Prosecutor who conducts the prosecution and to assist the Court being the officer of the Court. Hence, an Advocate so engaged by the victim or a victim has to perform the above said three roles which are complimentary to each other.



While the victim's counsel cannot conduct the prosecution independently under these provisions, as was held by the Supreme Court in *Shiv Kumar v. Hukam Chand & Anr.* [(1999) 7 SCC 467] and later reiterated in *The High Court of Judicature of Hyderabad for the State of Telangana and the State of Andhra Pradesh v. Mahabunisa Begum & Ors.* [Special Leave to Appeal (Crl.) No(s).2240/2018]; she/he may assist the prosecution by submitting written arguments after evidence is closed in the case. The Counsel must also be well acquainted with the facts of the case to be able to assist the Public Prosecutor in preparing a strong case.

Case excerpt:

Para 14, *Shiv Kumar v. Hukam Chand & Anr.* [(1999) 7 SCC 467]

—It is not merely an overall supervision which the Public Prosecutor is expected to perform in such cases when a privately engaged counsel is permitted to act on his behalf. The role which a private counsel in such a situation can play is, perhaps, comparable with that of a junior advocate conducting the case of his senior in a court. The private counsel is to act on behalf of the Public Prosecutor albeit the fact he is engaged in the case by a private party.

S. 301 r/w the proviso to S. 24(8) of the Code of Criminal Procedure is the manifestation of the victim's right to a fair trial. The introduction of S. 24(8) gives the victim the right to present their case to the court through their counsel.

Advocate David Sunder Singh, Chennai

b. Role of victim's counsel

The role of a victim's counsel is to help the victim understand the investigation and the trial process, and guard their legal rights and interests. The victim's counsel must take the following steps to ensure a fair and impartial trial:

1. To ensure relevant sections are recorded in the FIR, to pursue arrest of the accused mentioned in the FIR and to ensure victim's rights are protected during the period of investigation.
2. Additionally, to ensure that bonded labour inquiries are conducted, release certificates are issued, and other victim dues are secured.
3. To file *vakalatnama* on behalf of the victim in Court if the victim agrees to legal assistance. Explain to the victim the importance of the *vakalatnama* and what the document means before the victim signs the document. Explain the legal proceedings.
4. To introduce oneself to the Investigating Officer and Public Prosecutor at the court(s) to which the case will be assigned. To remain in contact with the prosecutor throughout the police investigation and trial, and continually introduce oneself and the case, and offer assistance to new prosecutors as prosecutors are transferred.
5. To obtain from the Court certified copies of the case documents — complaint, FIR, court order — and from the District Administration certified copies of the bonded labour enquiry forms—bonded labour report, release certificates and recovery of wages proceedings.
6. Following the filing of the charge sheet, to obtain a certified copy of the same from the Court and ensure it is a complete set and contains all necessary documents and evidence.
7. On obtaining a copy of the charge sheet, to prepare an element sheet of offences, i.e., a list of all offences that would be attracted and the evidence in the charge sheet corresponding to that offence.
8. To advocate for prompt and appropriate framing of charges by opposing attempts to delay framing of charges, and ensuring all appropriate offences are framed against the accused.
9. If any charge has not been framed in the charge sheet, to assist the Public Prosecutor in altering the charges before trial begins.
10. To assist the Public Prosecutor during trial.
11. To ensure the deposition of the witnesses is complete and accurate.





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Ensure registration of FIR/Complaint under relevant offences	Ensure issuance of Release Certificates	File application u/S. 301 r/w S. 24(8) of CrPC	Offer assistance to the IO & Public Prosecutor
Obtain certified copies of relevant documents	Obtain certified copy of charge sheet	Prepare element sheet of offences	Ensure framing of appropriate charges against accused
File petition for adding charges or accused if required	Assist Prosecutor during trial	Ensure deposition of the witnesses is complete and accurate	Obtain certified copies of court orders, witness depositions & evidence
Oppose adjournments; Oppose discharge petition, if filed	Oppose bail petitions, as appropriate	File written arguments	Ensure a fair and just trial



4. Opposing Bail

... if it is found that there is a possibility of interdicting fair trial by the accused if released on bail, this public interest of fair trial would outweigh the personal interest of the accused while undertaking the task of balancing the liberty of the accused on the one hand and interest of the society to have a fair trial on the other hand.

Justice A.K. Sikri, *State of Bihar v. Rajballav Prasad*, 2016

‘What if he finds out where I am and comes to threaten me? Will he hurt my family members? Will he know what I said against him to the police?’ These are questions often asked by trafficked victims when they find out that the accused has been released on bail. Since trafficking is a crime that involves multiple offenders, threat and intimidation from an offender who has not been apprehended by the police or is out on bail is not uncommon. In many cases, victims express reluctance to cooperate with the investigation or testify at trial fearing retaliation from the offenders. Therefore, in cases where the investigation is pending or where there is threat or a strong possibility of retaliation, bail must be opposed, if so desired by the client.

This chapter details the steps that lawyers representing victims of human trafficking cases must take while opposing bail. These steps will be helpful in ensuring a fair trial, free of fear and intimidation.



Victims have the right to be heard in all major proceedings in a criminal trial, including a bail hearing. If the victim believes that granting bail may endanger his/her safety or the safety of family members, then he/she is entitled to oppose grant of bail to the accused. There are several grounds on which an accused may seek bail, and therefore, the victim's lawyer must be prepared to effectively counter those grounds. The following steps and arguments may be helpful for a lawyer to successfully challenge an application for bail:

1. Obtaining informed consent for legal representation — In order to represent clients at Court, the Counsel must have a signed *vakalatnama*. Before obtaining a *vakalatnama*, ensure that the labourers are ready and prepared to give informed consent to legal representation. Obtaining informed consent requires explaining the legal process and the consequences of bail proceedings to the labourers.
2. Checking cause list and case status — Contact the local public prosecutor and ask to be notified if an application for bail is filed. Additionally, check the cause list and the case status daily. The case status can be checked online at <http://www.ecourts.gov.in>.
3. Preparing Element sheet — Prepare an element sheet of offences, i.e., a list of all offences that would be attracted by matching the evidence in the charge sheet with the ingredients of the particular offence.
4. Drafting objections to bail — The Counsel must be prepared to counter the claims for bail made by the accused. The objections to bail must describe the mandatory considerations a Court must weigh in deciding on an application for bail. Below are some of the rebuttals that could be offered.
 - a. In cases where an accused has been charged under both S. 370 of the Indian Penal Code, 1860, and the Bonded Labour System (Abolition) Act, 1976, a common objection is that the facts of the particular case does not attract the offence under S. 370 of the Indian Penal Code, 1860. This is because, while offences under S. 370 are non-bailable, offences under the Bonded Labour System (Abolition) Act, 1976, are bailable offences. This argument can be countered by submitting before the Court judgements where the accused has been convicted under both those offences. Additionally, the Court's attention must be drawn to the evidence in the case satisfying the elements of trafficking.
 - b. The defence may also obtain affidavits from relatives of the victim stating that a false case has been lodged or that the victims migrated of their own volition.
To counter this, two arguments may be furthered—
 - i. That the explanation to S. 370 of the Indian Penal Code, 1860, states that consent of the victim is immaterial in determining the offence of trafficking; or
 - ii. That the Supreme Court in *Rachapalli Abbulu and Others v. State of Andhra Pradesh [(2002) 4 SCC 208]* disapproved of the practice of such affidavits being obtained in advance and called it an attempt to subvert the justice system.

Case excerpt:

Para 10, *Rachapalli Abbulu and Others v. State of Andhra Pradesh [(2002) 4 SCC 208]*

—The practice adopted by the defence side in getting the affidavits of these witnesses in advance is to be deprecated. That, in a way, amounts to an attempt aimed at dissuading the witnesses from speaking truth before the court. The trial Judge as well as the High Court rightly rejected the defence contention. These witnesses appear to be illiterate persons. Their so-called affidavits must have been either cooked-up or obtained by playing a fraud on them. This type of interference in the criminal justice shall not be encouraged and is to be viewed seriously.

- c. If the police has filed a charge sheet before the Court, the defence may argue that the accused is entitled to be released on bail since the investigation is complete. This may be countered by arguing that the Madras High Court in *State v. Adi Rajaram [(1996) 1 CTC 249]* held that filing of charge sheet does not constitute a substantial change in circumstances and as a result, it is improper to grant bail merely on the ground that charge sheet has been filed.

Case excerpt:

Para 9, State v. Adi Rajaram [(1996) 1 CTC 249]

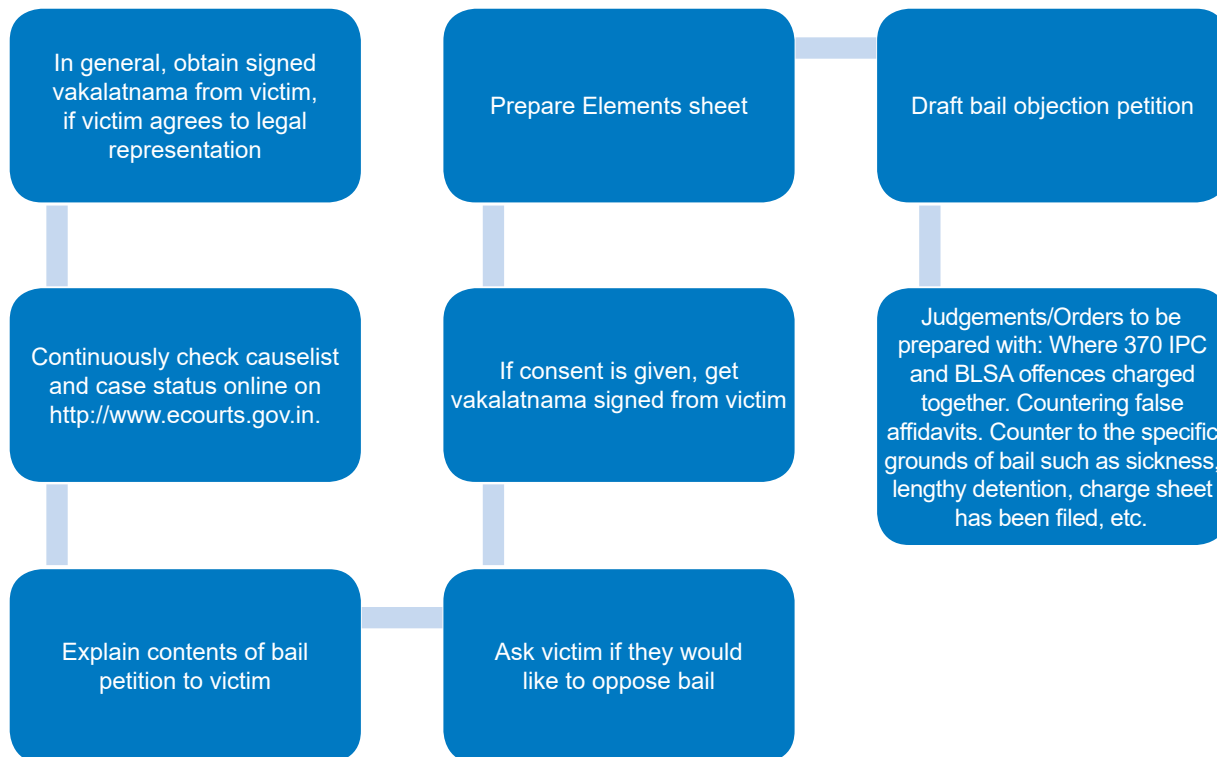
—Filing of a charge-sheet is only a compliance with the procedure within the stipulated period and it has nothing to do with the relative merits in the case. It may be stated that filing of a charge sheet cannot be construed to be a substantial change in circumstance. So far as the merits of the case is concerned, it is not appropriate to weigh the evidence at the stage of considering the prayer for bail.

- d. Relevant judgements must also be submitted to address specific grounds for bail such as sickness, lengthy detention, etc.

Coordination with the Public Prosecutor is an essential part of opposing bail petitions.

Advocate Prashant Kadadevar, Karnataka

Checklist for opposing bail





5. Remedies for Closure Report or Delay in Filing of Charge Sheet

The Court is not to accept the report which is contra legem...

Justice P. Sathasivam, Manu Sharma v. State (NCT of Delhi), 2010

Cases of bonded labour and human trafficking are often assigned low priority due to the police force being overburdened and under-resourced. Sufficient time and resources are generally not devoted to these investigations. This results in prolonged investigations, lapse in investigation such as failure in obtaining all factual information pertaining to the case, failure in producing all relevant documents before the court. This, in turn, either leads to filing of closure report due to insufficient evidence or a delay in filing of charge sheet.

However, in such cases, the victim is not without a remedy. This chapter discusses the various provisions in the Code of Criminal Procedure, 1973 that can be invoked to ensure fair investigation and prompt filing of charge sheet.



a. Challenging closure report

On completion of investigation, if the police conclude that an offence has been committed, it must file a report commonly referred to as a charge sheet or a challan. If the police conclude that no offence has been committed, it files a document commonly referred to as a B report, closure report, or final report.

The Judicial Magistrate, upon receiving a B Report or Closure Report, is not obligated to abide by the closure recommendation. If the Magistrate is of the opinion that a prima facie case has been made out against the accused, he may:

1. Take action on the basis of the police report—if the Magistrate feels that the police investigation justifies prosecution of the accused, the Magistrate may take cognisance of the offence and issue process, pursuant to S. 190 of the Code of Criminal Procedure, 1973, as can be inferred by the judgement of the Apex Court in *H.S. Bains v. State (UT of Chandigarh)* [(1980) 4 SCC 631].

Case excerpt:

Para 6, *H.S. Bains v. State (UT of Chandigarh)* [(1980) 4 SCC 631]

.....a Magistrate who on receipt of a complaint, orders an investigation under Sec. 156(3) and receives a police report under Sec. 173(1), may, thereafter, do one of three things: (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognisance of the offence under Sec. 190(1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report; (3) he may take cognisance of the offence under Sec. 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Sec. 200. If he adopts the third alternative, he may hold or direct an inquiry under Sec. 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be.

2. Take action on the basis of a protest petition—the victim/complainant also has the right to challenge the closure report by filing an application before the Magistrate. Such an application is commonly referred to as a protest/complaint petition. The Magistrate has the power to treat the protest petition as a complaint under S. 190 of the Code of Criminal Procedure, 1973, and proceed as per S. 200 of the Code of Criminal Procedure, 1973. The Magistrate may take action on the basis of the protest petition even after he has accepted the closure report filed by the police, as was held by the Supreme Court in *Mahesh Chand v. B. Janardhan Reddy* [(2003) 1 SCC 734] and reiterated in *Rakesh v. State of Uttar Pradesh* [(2014) 13 SCC 133].

Case excerpt:

Para 12, *Mahesh Chand vs B Janardhan Reddy* [(2003) 1 SCC 734]

—There cannot be any doubt or dispute that only because the Magistrate has accepted a final report, the same by itself would not stand in his way to take cognisance of the offence on a protest/complaint petition.

3. Direct further investigation — Where the Magistrate disagrees with the report and on applying his mind to the facts feels that there must be further investigation, he may direct the police to conduct further investigation and submit a further or a supplementary report. He may do this suo moto or on the basis of a protest petition, as was held in *Chandra Babu alias Moses v. State through Inspector of Police and Others* [(2015) 8 SCC 774].





Case excerpt:

Para 20, Chandra Babu alias Moses v. State and Others [(2015) 8 SCC 774]

.....Needless to say, the power of the Magistrate to direct for further investigation has to be cautiously used. In Vinay Tyagi [(2013) 5 SCC 762] it has been held: 41...The power of the Magistrate to direct – further investigation is a significant power which has to be exercised sparingly, in exceptional cases and to achieve the ends of justice. To provide fair, proper and unquestionable investigation is the obligation of the investigating agency and the court in its supervisory capacity is required to ensure the same. Further investigation conducted under the orders of the court, including that of the Magistrate or by the police of its own accord and, for valid reasons, would lead to the filing of a supplementary report.

b. Filing supplementary charge sheet for additional suspects

It is recommended that instead of delaying a charge sheet for want of sufficient evidence against a suspect, a charge sheet u/s 173 (2) of the Code of Criminal Procedure, 1973 may be filed and if the investigating agency is able to gather evidence against an additional suspect, it may file a supplementary charge sheet under S. 173(8) of the Code of Criminal Procedure, 1973.

Section 173(8), The Code of Criminal Procedure, 1973

Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

c. Seeking status report in case of prolonged investigation

The longer a charge sheet is delayed, the more difficult police investigation and the subsequent trial becomes. In cases where there has been prolonged delay in filing of a charge sheet, the complainant may enquire about the status of the investigation by filing an application under S. 172(2) of the Code of Criminal Procedure, 1973. The Court may then send for the police diary of the case, which contains a daily report of the steps taken in the investigation by the police officer, and check the progress made in the investigation.

Section 172(2), The Code of Criminal Procedure, 1973

Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

d. Summoning a person not named in the charge sheet to stand trial

A suspect whose name finds no mention in the charge sheet, but whose complicity in the case is evident from the materials available on record, can also be made to stand trial, if the Court is satisfied that it must proceed against such a person. This power may be exercised in the following manner:



1. Only on the basis of evidence in the charge sheet or any other material available on record before the court prior to it taking cognisance

Stage	Court	CrPC Section
Before committal of a case to Court of Sessions	By Magistrate	190
After committal but before trial commences	By Court of Sessions	193
Before commencement of trial	By Magistrate/By Special Judge if police report is directly submitted before it	190

Case excerpt:

Para 35, Dharam Pal and Ors. v. State of Haryana and Anr. [(2014) 3 SCC 306]

....In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column no.2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter.

Case excerpt:

Para 40, Dharam Pal and Ors. v. State of Haryana and Anr. [(2014) 3 SCC 306]

—In that view of the matter, we have no hesitation in agreeing with the views expressed in Kishun Singh's case (supra) that the Session Courts has jurisdiction on committal of a case to it, to take cognisance of the offences of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record.

Case excerpt:

Page 7, Sita v. State of Rajasthan and Others [S.B. Criminal Revision No. 488 / 2017]

—The learned Special Judge, who is empowered by law to accept a direct charge-sheet, acts as a Magistrate empowered to take cognisance on police reports as per Section 190 Cr.P.C.

2. Only on the basis of evidence produced during trial

Stage	Court	CrPC Section
After commencement of trial but before judgement	By Magistrate	319
After commencement of trial but before judgement	By Court of Sessions	319

Case excerpt:

Para 11, Kishun Singh and Ors. v. State of Bihar [(1993) 2 SCC 16]

—On a plain reading of sub-section (1) of Section 319 there can be no doubt that it must appear from the evidence tendered in the course of any inquiry or trial that any person not being the accused has committed any offence for which he could be tried together with the accused.



6. Addressing Common Reasons for Acquittal

The travails and tribulations of victims of crime begin with the trauma of the crime itself and, unfortunately, continue with the difficulties they face in something as simple as the registration of a First Information Report (FIR)...The ordeal continues, quite frequently, in the investigation that may not necessarily be unbiased, particularly in respect of crimes against women and children. Access to justice in terms of affordability, effective legal aid and advice as well as adequate and equal representation are also problems that the victim has to contend with and which impact on society, the rule of law and justice delivery.

Justice Madan Lokur, *Mallikarjun Kodagali v. State of Karnataka & Ors*, 2018

According to data on conviction rate for 2014, collated by National Crime Records Bureau (NCRB), the percentage of cases in which the accused received punishment stood at over 45 per cent. This shows that a huge percentage of criminal cases in India ends up either as discharge or acquittal of accused person. Acquittal does not necessarily mean that the accused was not guilty or that the crime did not happen, it only means that there was not enough evidence to conclude if the accused committed the crime. Some of the factors that could lead to an acquittal include insufficient oral/documentary evidence, hostile witness, ineffective closing arguments, etc.

This chapter discusses the common reasons for acquittal in cases of bonded labour and human trafficking and the measures that may be taken to ensure that the victim is not denied justice due to a broken public justice system.



a. Preventing hostile testimony

A survivor's account of the events, if credible and trustworthy, can form the basis for a conviction. However, in cases of bonded labour and labour trafficking, survivors tend to turn hostile and contradict the prosecution's case due to intimidation and fear of retaliation by the accused. Here are some of the protectionist measures that could be taken to prevent witnesses from turning hostile—

1. Requesting for a police outpost to be stationed at the survivors' village — In situations where the survivors or their family members are being threatened by the accused, a request can be made asking for a police outpost to be stationed at their village.

In a case where 167 labourers in Bihar were released after being trapped in a multi-generational system of bonded labour, the survivors began receiving threats from the accused, who were powerful landowners from the same village. The NGO that assisted in their rescue contacted the police and sought protection for them. The Inspector General then commissioned a police outpost at their village. This gave a sense of security to the victims and gave them assurance that the accused would be held accountable.

2. Sending a harassment protection letter — If there is apprehension of threat or harassment, a letter seeking protection from harassment [attached as Annexure E] may be sent to the local police of the jurisdiction(s) at which the labourers reside. The protection letter must identify the victims and offenders and ask for police protection to be provided to the victims. If release certificates have been issued to the labourers, a copy of the certificates may be attached to the letter. If an FIR has been registered, a copy of the complaint and the FIR must be attached to the said letter.
3. Seeking cancellation of bail — If accused harasses a witness, including a victim, an application may be filed to have the accused's bail cancelled under S. 437(5) of the Code of Criminal Procedure, 1973.

Section 437 of The Code of Criminal Procedure, 1973 When bail may be taken in case of non-bailable offence—

(5) Any court which has released a person on bail under sub-section

(1) or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

4. Testimony via video conference — The Information Technology Act, 2000, paved the way for legal recognition of electronic data. The Supreme Court in *State of Maharashtra v. Dr. Praful B. Desai* [(2003) 4 SCC 601] held that evidence under S. 3 of the Indian Evidence Act, 1872, includes in its ambit, oral, documentary and electronic records, which also includes video conferencing.

Case excerpt:

Para 12, *State Of Maharashtra v. Dr. Praful B. Desai* [(2003) 4 SCC 601]

—Section 3 of the Indian Evidence Act reads as follows:

Evidence — Evidence means and includes —

1. all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry.
Such statements are called oral evidence.
2. all documents including electronic records produced for the inspection of the Court.
Such documents are called documentary evidence.

Thus, evidence can be both oral and documentary and electronic records can be produced as evidence. This means that evidence, even in criminal matters, can also be by way of electronic records. This would include video-conferencing.





(i) Application for video conferencing:

- The presiding officer may either suo moto or on an application made by either party or by a witness, order summons to be issued to any person to appear before him or make submissions to the Court through video conferencing.
- While preparing the order to issue summons to the witnesses to testify via video conferencing, the Court should copy all the relevant stakeholders as recipients, directing them to make necessary arrangements to produce the witness to testify in Court through video conferencing.
- The Presiding Officer while making the order for issuance of summons may also request/appoint an NGO to assist with locating the witness and assist with the entire process of video conferencing.

Deposition through video conference in interstate or intercountry cases serves the dual purpose of reducing the likelihood of hostile testimony and preventing inordinate delay in cases.

Advocate Kile D'Souza, Mumbai

(ii) Circumstances under which video conferencing is permissible:

The Court may permit video conferencing in circumstances where it would be expensive, inconvenient or a security risk for the witness to attend a Court in person. Since victims testifying in court in bonded labour or labour trafficking cases is a security risk, causes delay due to the distance and is also inconvenient, it is recommended that the victim's lawyer assist the prosecution in applying to court for recording their evidence via video conferencing.

Court allows recording of testimony via video conferencing in a case where witnesses were threatened by the accused —

The Delhi High Court in *Sanjay Sonkar v. State* [2012 (190) DLT 707] criticised a trial court for failure to record the testimony of a witness via video conferencing in one such case. The prosecution had made the request, noting that the witness was afraid of the accused, but the trial court denied the request —on flimsy and untenable grounds.

Case excerpt:

Para 21, *Sanjay Sonkar v. State* [2012 (190) DLT 707]

—Trial Court most curiously by its order said that video conferencing would be lengthy and time consuming, and turned it down. A direction was given to IO to provide adequate security to Subedar to depose in the Court. Counsel for the accused said that the threat allegation was unfounded; he also said that the Subedar could be provided security.

Most importantly, Counsel did not oppose video. These circumstances were set out by the Court to show that even though in principle no opposition was made for recording evidence through conferencing, the Court rejected it on flimsy and untenable grounds. This Court is of opinion that such a view (that-examination would have been lengthy and time consuming) was misconceived to say the least. It showed a technology resistant approach by the concerned Judicial Officer, who was perhaps unwilling to innovate.

It must be noted that where the victim is testifying against the accused, it is important that she/he be able to identify the accused through video conferencing.

Guidelines for conducting video conferencing have been issued by the Delhi High Court [attached as Annexure F].

b. FIR to be lodged promptly

First information of the commission of a cognisable offence is enough to constitute the FIR under S. 154 of the Code of Criminal Procedure, 1973.



Section 154, The Code of Criminal Procedure, 1973

Information in cognisable cases – (1) Every information relating to the commission of a cognisable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

The FIR must be lodged with utmost speed. An inordinate delay in filing FIR may prove fatal to the prosecution case, even leading to an acquittal.

To avoid delay in lodging FIR, a letter stating information about the crime may be sent to the concerned police station through registered post A.D. All communication between the complainant and the Investigating Officer must be in writing, and the complainant must always obtain proof of acknowledgment of any information exchanged with the Investigating officer.

In case of a delay in lodging FIR –

1. Cogent reasons for delay must be satisfactorily explained to the court.
2. The reason for the delay must also be established through documentary evidence and placed before the court.

c. All relevant documents to be produced as evidence before the court

A major cause for acquittal in cases under the Bonded Labour System (Abolition) Act, 1976, is the failure to produce before the Court, crucial documents that establish a case of bonded labour.

These include –

1. Release Certificate issued under Para 3.4 of the Standard Operating Procedure for Identification and Rescue of Bonded Labourer and Prosecution of Offender, 2017¹² and S. 12 of the Bonded Labour System (Abolition) Act, 1976;
2. Bonded Labour Enquiry Forms as under Para 3.3 of the Standard Operating Procedure for Identification and Rescue of Bonded Labourer and Prosecution of Offender, 2017;¹³
3. Executive release order;
4. Receipt showing grant of Initial Rehabilitation Amount under Para 3.5 of the Standard Operating Procedure for Identification and Rescue of Bonded Labourer and Prosecution of Offender, 2017,¹⁴ read with the Central Sector Scheme for Rehabilitation of Bonded Labourer, 2016;¹⁵
5. Sub divisional magistrate's report to district magistrates; and
6. Documents collected from the Labour Department such as register of wages, muster roll, register of overtime/fines/advances/etc. If these documents are not maintained by the employer, then the same should also be recorded.

Since these documents corroborate the victim's version of events, it is of vital importance that these are submitted to the Court along with the charge sheet or the final report filed by the police.

¹² Standard Operating Procedure for Identification and Rescue of Bonded Labourer and Prosecution of Offender [F.No. S-11012/01/2015-BL (Pt.)], Ministry of Labour and Employment, 17 August 2017, p. 3.4.

¹³ Standard Operating Procedure for Identification and Rescue of Bonded Labourer and Prosecution of Offender [F.No. S-11012/01/2015-BL (Pt.)], Ministry of Labour and Employment, 17 August 2017, p. 3.3.

¹⁴ Standard Operating Procedure for Identification and Rescue of Bonded Labourer and Prosecution of Offender [F.No. S-11012/01/2015-BL (Pt.)], Ministry of Labour and Employment, 17 August 2017, p. 3.5.

¹⁵ Central Sector Scheme for Rehabilitation of Bonded Labourer, [F. No. S-11012/01/2015-BL], Ministry of Labour and Employment, 18 May 2016.





d. Ensuring that all material witnesses are called to testify

Witness testimony is pivotal to proper disposition of a case and, therefore, all relevant witnesses should be called to testify. The names of witnesses whose testimony is essential to the case including —

1. the survivors;
2. the SDM who issued the release certificate;
3. Labour Officer, where relevant
4. Members of the NGO's rescue team
5. *Panch* witnesses
6. Local witnesses

should be added to the witness list and they must be examined on oath.

e. Points to be emphasised during closing arguments

1. Burden of proof for bonded debt — the burden to show that debt claimed by a bonded labourer is not bonded debt lies on the creditor under S. 15 of the Bonded Labour System (Abolition) Act, 1976. Thus, the victim is not obligated to produce evidence to establish that a debt has been advanced. However, if there is evidence to prove payment of advance or economic consideration, then such evidence should be mentioned in the closing arguments.

Section 15, The Bonded Labour System (Abolition) Act, 1976

Burden of proof — Whenever any debt is claimed by a bonded labourer, or a Vigilance Committee, to be a bonded debt, the burden of proof that such debt is not a bonded debt shall lie on the creditor.

2. Bonded obligation—if there is evidence to show that bondage is in pursuance of a customary or social obligation, succession or caste or community, then the same should also be mentioned in closing arguments.
3. Rustic witness—minor inconsistencies and small inaccuracies must not be given undue weightage since the victims belong to a poor stratum of society that does not have access to education. The evidence of a rustic witness must, therefore, be appreciated as a whole.
4. Existence of evidence establishing forfeiture of rights and/or freedoms — Evidence establishing at least one of the following elements must be produced before the court:
 - a. Labourer rendered service for no wages or for less than minimum wages;
 - b. Labourer forfeited the freedom of other employment;
 - c. Labourer forfeited the right to move freely throughout India;
 - d. Labourer forfeited the right to appropriate or sell at market value any of his property or product of his labour.
5. Existence of evidence establishing elements of trafficking — in cases of labour trafficking where S.370 has been invoked in addition to evidence establishing bonded labour, evidence establishing the following elements must be placed before the court:
 1. The act of trafficking
[recruiting/transporting/harboursing/ transferring/receiving a person or persons]
 2. The purpose of trafficking
[physical exploitation/slavery/practices similar to slavery or servitude]
 3. The means of trafficking
[(i) using threats; (ii) using force, or any other form of coercion; (iii) by abduction; (iv) by practicing fraud, or deception; (v) by abuse of power; or (vi) by inducement, including the giving or receiving of payments or benefits in order to achieve the consent of the person having control over the victim].



6. No obligation to reveal source of information received in relation to commission of an offence — Under S. 125 of the Indian Evidence Act, 1872, a Magistrate or a police officer cannot be compelled to reveal the source from which they received information relating to the commission of an offence.

Section 125, the Indian Evidence Act, 1872

Information as to commission of offences. — No Magistrate or Police officer shall be compelled to say whence he got any information as to the commission of any offence.

7. Case laws to be referred in written closing arguments —

Cases

Source	Issue
Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161	pg. 207, para 24, Less than Minimum Wage is Forced Labour pg. 207, para 24, pg. 211 para 28, Bonded labour inquiries are not adversarial inquiries pg. 207, para 24, Forced Labour is Bonded Labour pg. 208, para 25, NGOS/CSOs should be involved in identifying bonded labourers, and the government should accept their assistance pg. 210. para 28, The owner should never be present while the labourers are being inquired. pg. 218, para 38, Mere imposition of fines is not sufficient punishment.
Public Union for Civil Liberties v. State of Tamil Nadu, (1994) 5 SCC 116	pg. 116 and 117, para 1(2) and (8) to (9), Criminal Prosecution of offender of bonded labour is mandatory
Neeraja Chaudhary v. State of Madhya Pradesh, (1984) 3 SGC 243	pg. 253, para 4, Government shall conduct a bonded labour investigation when an NGO reports a case of bonded labour, and include that NGO in the rescue and investigation
Dharmendra Kumar Beuria and Ors. Vs. State of Orissa, Criminal Misc. Case No. 3401 of 2015 decided by the Orissa High Court on 20.11.2015	para 7 and 14, 'Recruited' includes situations where a minor domestic help is acquired by payment of money to her custodian para 7 and 14, 'Harboured' includes situations where a minor domestic help kept in the home of the offender para 7 and 14, 'Inducement' includes situations where cash payment is made to the custodian of a minor domestic help para 6 and 14, Domestic help tortured and abused is Slavery, practices similar to slavery or servitude





Source	Issue
Dhanurjaya Putel and Anr. v. State of Orissa, (2003) 95 CLT 54 (Orissa High Court)	para 10, Denial of Freedom of Movement and Minimum Wages or Market Access is Slavery & Servitude para 7, 'Deceit' and 'abduction' includes situations and applies to the use of advances to compel labourers to leave their home and work para 12, All possible offences to be included at the stage of taking cognizance
People's Union for Democratic Rights v. Union of India. (1982) 3 SCC 235	pg. 259 to 260, para 14, Less than Minimum Wage is Forced Labour pg. 256, para 13, compulsion/Force is Forced Labour even if remunerated for pg. 256, para 13, Contract or Agreement does not give right to forced labour

f. Increasing victim's understanding of court proceedings

The victim's counsel must explain in a language understandable to the victim the nature of court proceedings, the meaning and application of relevant laws and the legal consequences of making false statements. The victim's counsel must keep the victim informed of the progress in the case proceedings to build a relationship of trust with the victim.

The rule of confidential communication laid down under S. 129 of the Indian Evidence Act, 1872, must also be explained to the victim. The victim must be informed that the information exchanged with the Legal Counsel is privileged and that she/he is not obligated to disclose those conversations by virtue of the protection guaranteed under S. 129 of the Indian Evidence Act, 1872.

Section 129, The Indian Evidence Act, 1872

Confidential communications with legal advisers — No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.



Addressing common reasons for acquittal

Hostile testimony

- Police outpost at survivor's village
- Harassment protection letter
- Seeking cancellation of bail
- Testimony via Video Conference

Unexplained delay in lodging FIR

- Prompt filing of FIR
- FIR through registered post A.D.
- Documentary evidence to explain reason for delay

Failure to submit relevant documentary evidence

- Submitting release certificates
- Submitting Bonded Labour Enquiry Forms
- Submitting Executive release order
- Submitting Receipt of Initial Rehabilitation amount
- Submitting SDM's report to District Magistrate
- Submitting Documents from Labour Department relating to recovery of wages, etc.

Failure to summon material witnesses

- Summoning survivors
- Summoning SDM who issued Release certificate
- Summoning Labour Officer
- Summoning members of NGO's rescue team
- Summoning Panch witnesses
- Summoning local witnesses

Ineffective closing arguments

- Emphasising on Burden of proof
- Emphasising on Bonded obligation
- Emphasising on Rustic witness
- Emphasising on existence of evidence establishing forfeiture of rights/or freedoms
- Emphasising on existence of evidence establishing elements of trafficking
- Invoking S.125 of Indian Evidence Act, 1872
- Referring to relevant case laws

Victim's lack of familiarity with legal proceedings

- Explaining to the victim the nature of court proceedings & application of relevant laws
- Keeping victims informed of progress in case proceedings
- Explaining rule of confidential communication under S. 129 of Indian Evidence Act, 1872





7. Pursuing Civil Penalty Proceedings

... even constitutional provisions and governmental decisions about labour and concern for its welfare cease to achieve the desired goals when the legal process limps and lingers and rights turn illusory when remedies prove elusive. The life of rights is remedies and a jurisprudence of ready reliefs alone can inhibit the weaker numbers of our land asking the disturbing question: “Is Law Dead?”

Justice Krishna Iyer, *Straw Board Manufacturing Co. Ltd. v. Its Workmen*, 1977

Since the Bonded Labour System (Abolition) Act, 1976 does not prescribe a minimum sentence, in most cases, the offenders are sentenced with imprisonment till the rising of the court or a meagre fine. This has led to a sense of impunity in the minds of the offenders. As a result, some lawyers advocating for victims of bonded labour have begun to simultaneously seek civil remedies for non-payment of wages.

Since the reasons for committing the offence and forcing victims under bondage were usually for economic gain, pursuing civil penalties under various labour laws could strike directly at one of the root causes. In one case, the court ordered that the offender pay Rs 70 lakhs to 15 victims, which amounts to Rs 4.5 lakhs per victim as the court can order up to 10 times of the unpaid wages as compensation.

Using both criminal and civil proceedings sends a strong message to offenders that their actions would have consequences and also expands the idea of justice for survivors.



Need for initiating civil penalty proceedings in cases of bonded labour and labour trafficking

Illegal gains is one of the major underlying factors that drives forced labour, according to a report released by the International Labour Organisation (ILO) in 2014.¹⁶ The study estimates that the total profits obtained from the use of forced labour in the private economy worldwide amount to US\$150 billion (Rs. 9 lakh crore) per year, with most of the profits being generated in Asia. Imposing pecuniary penalties is, therefore, imperative for tackling the crime of forced labour. Offenders will be deterred from procuring or engaging forced labour only if the penalties levied on them outweigh the illegal gains obtained.

Imposition of a jail term and fines in cases of bonded labour and labour trafficking must, therefore, not be mutually exclusive. They must both be part of the penalty regime employed by the government for holding offenders accountable. Since they are crimes characterised by low or unpaid wages, financial penalties may be imposed on the employers for non-payment of wages or payment of less than minimum wages to a labourer under the Payment of Wages Act, 1936, and the Minimum Wages Act, 1948, respectively. Penalties may also be imposed for non-compliance of provisions relating to employment under various labour legislations.

Imposition of heavy penalties serve a dual purpose:

1. Acts as a significant deterrent to procuring or engaging forced labour; and
2. Compensates victims for losses

a. Procedure for Recovery of Wages under the Payment of Wages Act, 1936, and the Minimum Wages Act, 1948

In cases where there has been excessive deductions or delay in payment of wages, the labourer can invoke S. 15 of the Payment of Wages Act, 1936.

Section 15 (1), Payment of Wages Act, 1936

Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims — The State Government may, by notification in the Official Gazette, appoint 3* [a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947, (14 of 1947) or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State or] any Commissioner for Workmen's Compensation or other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area, including all matters incidental to such claims.

In cases where there has been payment of less than minimum rate of wages or failure to make payment of wages within the time prescribed, the labourer can invoke S. 20 of the Minimum Wages Act, 1948. Claims in respect of the payment of remuneration for days of rest or of wages at the overtime rate can also be filed under this Act.

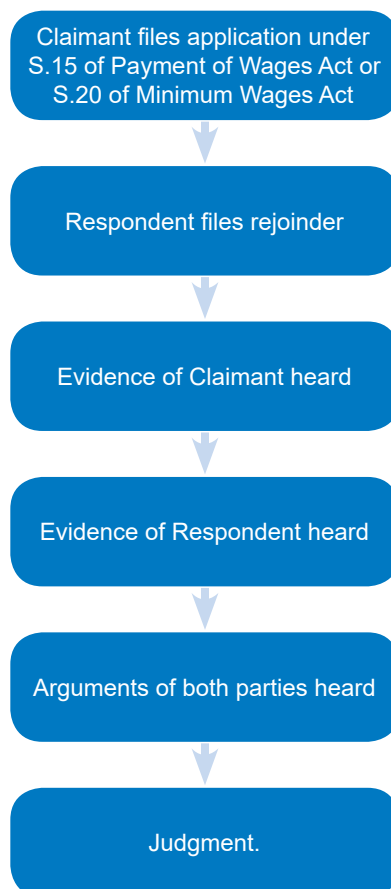
Section 20(1), Minimum Wages Act, 1948

Claims—The appropriate Government may, by notification in the Official Gazette, appoint any Commissioner for Workmen's Compensation or any officer of the Central Government exercising functions as a Labour Commissioner for any region, or any officer of the State Government not below the rank of Labour Commissioner or any other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the Authority to hear and decide for any specified area all claims arising out of payment of less than the minimum rates of wages or in respect of the payment of remuneration for days of rest or for work done on such days under clause (b) or clause (c) of sub-section (1) of section 13 or of wages at the overtime rate under section 14,] to employees employed or paid in that area.

¹⁶ Profits and Poverty: The Economics of Forced Labour, International Labour Organisation, 2014.



Procedure under S.15 of the Payment of Wages Act, 1936, & S. 20 of the Minimum Wages Act, 1948



b. Other legislations under which penalty may be imposed

There are other legislations under which penalties may be imposed for non-compliance of provisions relating to employment.

These include:

1. Factories Act, 1948
2. Contract Labour (Regulation & Abolition) Act, 1970
3. Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
4. Payment of Bonus Act, 1965
5. Child and Adolescent Labour (Prohibition & Regulation) Act, 1986
6. Employee's Compensation Act, 1923
7. Employees' State Insurance Act, 1948
8. Industrial Disputes Act, 1947

8. Invoking the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, in Bonded Labour Cases

Slavery does not merely mean a legalised form of subjection. It means a state of society in which some men are forced to accept from others the purposes which control their conduct.

Dr B R Ambedkar, Writings and Speeches: A Ready Reference Manual

According to government figures, over 86.6 per cent of rescued and released bonded labourers are from scheduled caste and scheduled tribe communities. The tyranny of labour exploitation of marginalised communities at the hands of the upper caste amongst others is not an anomaly. Media reports are rife with stories of the violence dominant castes have permeated against the dalits and adivasis. Therefore, in some states like Bihar, practice of Bonded Labour System is formally considered as an offence against the scheduled caste and scheduled tribe communities attracting Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (POA). The POA Act, in addition to prevention of commission of the offence under POA, also provides for adequate relief and rehabilitation of the victims of such offences.

This chapter discusses the rights of victims under the POA Act, and the remedy for rehabilitation of rescued bonded labourers, which, along with provisions under the Central Sector Scheme for Rehabilitation of Bonded Labourer, will positively safeguard the survivors from re- bondage.



There is a strong link between caste hierarchies and relationships of bondage. Bonded labour is conjoined with caste in the form of caste-based occupations, such as the bartan system, etc. Refusal to perform these caste-based obligations invites violence and ostracisation. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, prohibits the commission of offences against members of the Scheduled Castes and Scheduled Tribes and provides for rehabilitation of the victims of such offences.

a. Application of the act

The act shall have application in cases where the accused is not a member of a Scheduled Caste or a Scheduled Tribe.

S. 3(1)(h) and S. 3(2)(v) of the Act can be invoked in a case of bonded labour if the victim is a member of a Scheduled Caste or a Scheduled Tribe, and the accused does not belong to a Scheduled Caste or a Scheduled Tribe.

While an offence of bonded labour would attract S. 3(1)(h), an offence of trafficking under S. 370 of the Indian Penal Code, 1870, would attract S. 3(2)(v).

Section 3, The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

Punishments for offences of atrocities — (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, —

(h) makes a member of a Scheduled Caste or a Scheduled Tribe to do—*begar* or other forms of forced or bonded labour other than any compulsory service for public purposes imposed by the Government shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

Section 3, The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

Punishments for offences of atrocities. — (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, —

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine.

It must be noted that if the act of an accused is an offence under other special legislations in addition to the POA Act and a special court other than the one established under the POA Act has the jurisdiction to try all the offences, then even in such a case, the victim shall have the right to invoke the beneficial provisions of the POA Act before the Special Court trying the offences, as was held in *In Re: The Registrar (Judicial) High Court, Reference Case No. 1 of 2017*.

b. Relevant provisions under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995

The Act adopts a victim-centred approach to investigation and prosecution. Besides an entire chapter focusing on the rights of victims and witnesses, the Act also includes measures for speedy investigation and trial.

1. 'Victim,' broadly defined

The term 'victim' has been defined to include relatives, legal guardian and legal heirs of the member of a Scheduled Caste or a Scheduled Tribe.



Section 2, The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

(ec) – victim means any individual who falls within the definition of the – Scheduled Castes and Scheduled Tribes under clause (c) of sub- section (1) of section 2, and who has suffered or experienced physical, mental, psychological, emotional or monetary harm or harm to his property as a result of the commission of any offence under this Act and includes his relatives, legal guardian and legal heirs.

The rights granted to victims under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is a shield against witness intimidation.

Advocate Rahul Singh, Delhi

2. Provisions for speedy trial

The following provisions enable expeditious disposal of cases:

- a. Offences to be investigated by a police officer not below the rank of a Deputy Superintendent of Police. [Rule 7(1) of POA Rules]
- b. Grant of anticipatory bail barred in cases under POA Act. [S.18A(2) of the Act]
- c. Investigation to be completed and charge sheet to be filed within sixty days. [Rule 7(2) of POA Rules]
- d. Establishment of Special Courts and Exclusive Special Courts that shall have the power to directly take cognisance of offences under the Act. [section 14(1) of the Act]
- e. Day-to-day proceedings. [section 14(3) of the Act]
- f. Trial to be completed within two months, as far as possible. [section 14(3) of the Act]
- g. Appeal to be disposed of within three months, as far as possible. [section 14-A (4) of the Act]

3. Rights of victims and witnesses

Section 15-A in Chapter IV - A of the Act grants extensive rights to victims and witnesses to enable them to fearlessly depose in Court.

These include —

- a. Protection against threats — State shall make arrangements for the protection of victims, their dependents, and witnesses against any kind of intimidation or coercion or inducement or violence or threats of violence. [sub-section (1)]
- b. Timely notice — A victim or his dependent shall have the right to reasonable, accurate and timely notice by the Special Public Prosecutor or the State Government of any Court proceeding including any bail proceeding. [sub-section (3)]
- c. Right to apply to summon or examine parties — A victim or his dependent shall have the right to apply to the Special Court or the Exclusive Special Court, as the case may be, to summon parties for production of any documents or material, witnesses or examine the persons present. [sub- section (4)]
- d. Right to be heard — A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing. [sub-section (5)]
- e. Immediate action in respect of any complaint relating to harassment — The concerned Court shall take immediate action in respect of any complaint relating to harassment of a victim, informant or witness and on the same day, if necessary, pass appropriate orders for protection. [sub-section (8)(c)]
- f. Duty upon the State to specify an appropriate scheme to ensure implementation of victim's right to —
 - (i) Travel and maintenance expenses [sub-section (6)(b) and Rule 11 of the Scheduled Castes and Scheduled Tribes (PoA) Rules, 1995]



(ii) Legal aid [sub-section (11)(m)]; and

(iii) Immediate relief in cash or in kind. [sub-section (11)(b)]

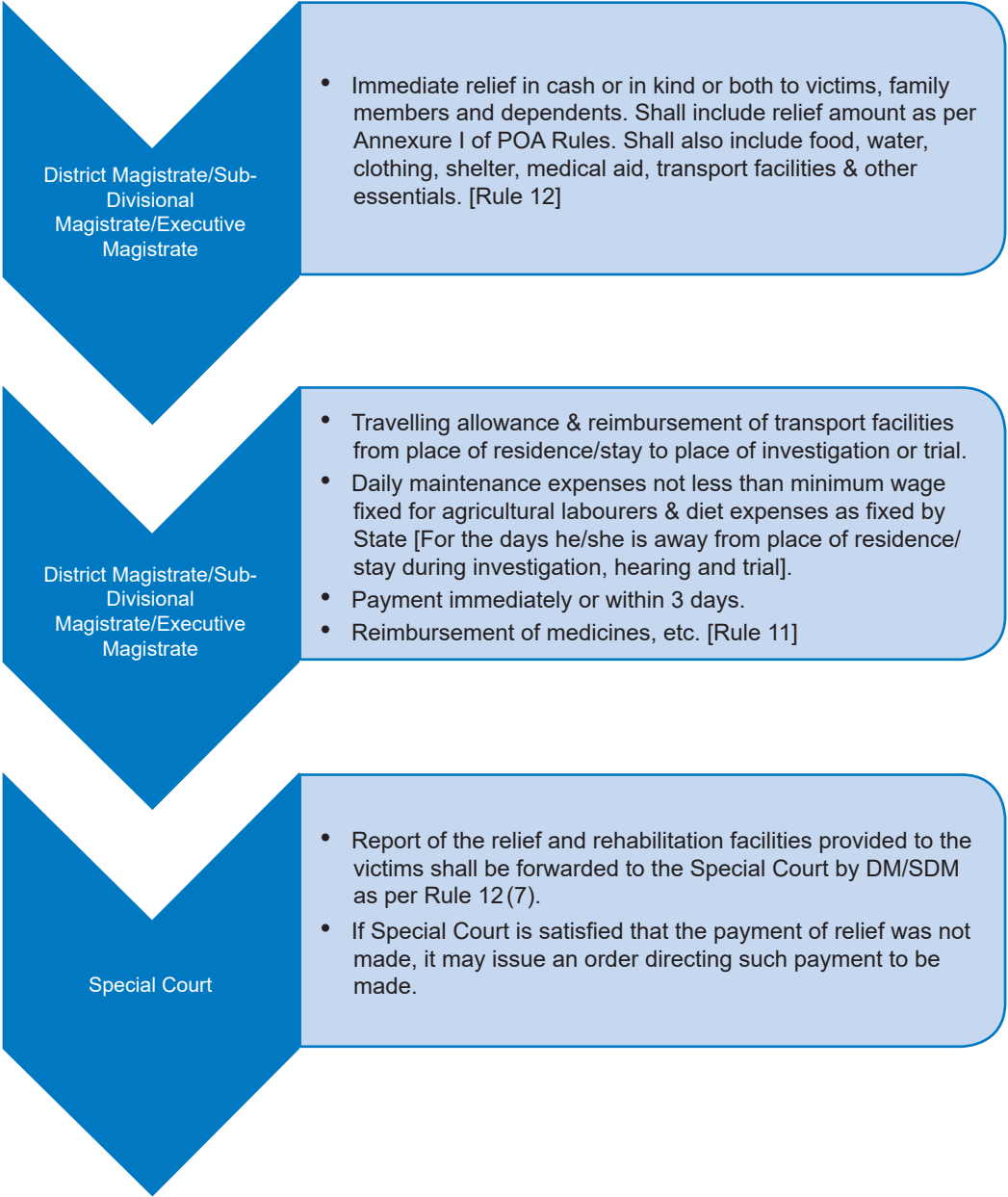
g. Assistance from Non-Government Organisations, social workers or advocate — It shall be the right of the atrocity victims or their dependents, to take assistance from the Non-Government Organisations, social workers or advocates. [sub-section (12)]

h. Compensation — As per Rule 12 (4) read with Annexure I of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, a victim of bonded labour is entitled to a compensation of rupees one lakh and a victim of trafficking would be entitled to a compensation of rupees four lakh. The amount shall be given in three installments — 25 per cent at the stage of FIR, 50 per cent when the charge sheet is sent to the Court and remaining 25 per cent shall be given at the time of conviction.

The relevant entry in Annexure I of the Rules is given below.

ANNEXURE I		
Norms for relief amount		
8.	<i>Begar</i> or other forms of forced or bonded labour [Section (3)(1)(h) of the Act].	One lakh rupees to the victim. Payment to be made as follows: (i) Payment of 25 per cent. First Information Report (FIR) stage; (ii) 50 per cent when the charge sheet is sent to the court; (iii) 25 per cent when the accused are convicted by the lower court.
40.	Committing offences under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more [Section 3(2)(v) of the Act].	Four lakh rupees to the victim or his dependents. The amount would vary if specifically provided otherwise by this Schedule. Payment to be made as follows: (i) Payment of 25 per cent. First Information Report (FIR) stage; (ii) 50 per cent when the charge sheet is sent to the court; (iii) 25 per cent when the accused are convicted by the lower court.

4. Relief and Rehabilitation measures



Legal Awareness

Access to law postulates awareness of law and activist awareness of legal rights is the condition for seeking court justice.

Justice Krishna Iyer, Sunil Batra (II) v.
Delhi Administration, 1978

Bonded labour is often perceived as something archaic and non-existent in Indian society today. Police officers and district administration officials are generally unacquainted with the law on bonded labour, including the procedures for its implementation. In some ways, there are understandable reasons for this as the District Magistrate (DM) and/or police officers have many other pressing matters to deal with. There are a number of laws, policies, orders, etc., which they work to implement, and one cannot have complete knowledge of all laws, at all times, in all places. Bonded labour cases are also not reported and documented enough in districts and this further contributes to their ignorance of it. Therefore, trainings, refreshers, orientations and all other forms of legal awareness is critical to addressing the problem of bonded labour and human trafficking in India.

One way of imparting legal awareness is through focussed training workshops for police officers as well as district administration officers. Trainings can be used as platforms to share the latest government policies and schemes in relation to the crime of human trafficking and bonded labour. Furthermore, such crimes often evolve into different forms as traffickers find newer and more innovative ways to exploit the vulnerable. Therefore, training and legal awareness is all the more important to facilitate discussions on how the law can be implemented to address newer forms of the crime. Thirdly, legal awareness is also an opportunity to build consensus and create will among implementing officials to combat the crime. Building knowledge of an issue creates that needed 'will and inspiration' to act against the crime. An increased understanding and knowledge of the law fosters an increased confidence and will to implement the law.

This topic discusses strategies for imparting legal awareness among key public justice officials, which could play a key role in addressing the problem of bonded labour and human trafficking.



Senior AHTU officials at a training organised by the Rajasthan government





1. Working alongside the Government

a. Workshops for district administration, judiciary, police officials and labour officials

In order to strengthen the response to bonded labour and labour trafficking, workshops must be held for Executive and Judicial Magistrates, District Judges and police officials. This leads to sensitisation to the issue of bonded labour, awareness of the law on bonded labour, and labour trafficking and its changing forms. Holding workshops for labour officials will result in efficient implementation of the law on recovery of wages and other labour laws.

b. Building a strong network of lawyers

A comprehensive program for building a network of lawyers would create an opportunity for legal practitioners working on issues of human rights to benefit from each other's experience and knowledge and gain exposure to other areas of legal practice. It would also create opportunities for networking and give lawyers practising in district and sub-district courts access to expert legal advice.

c. Urging state governments to issue circulars to major stakeholders including district officials and police officers containing detailed procedures to be followed in cases of bonded labour

Civil society organisations must request state governments to issue circulars to District and Police officials of detailed procedures to be followed in cases of bonded labour.

For instance, a circular must be issued containing instructions on vital documents to be filed along with the charge sheet/final report, to police officers investigating offences relating to bonded labour.

d. Working with labour officials for effective implementation of regulatory labour law

Sustained government action on implementation of labour standards is essential to reduce bonded labour. Civil Society Organisations must, therefore, work with Labour officials to ensure implementation of regulatory labour law such as—

1. Examination of registers or record of wages to be maintained under the Minimum Wages Act, 1948.
2. Examination of registers or record to be maintained under the Contract Labour (Regulation and Abolition) Act, 1970.
3. Inspection of work premises to ensure compliance of provisions relating to payment of wages, conditions of service, or facilities to be provided to inter-state workmen under the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.

e. Working closely with Vigilance Committees

Bonded labour Vigilance Committees are mandated to be constituted in each District and Sub-division of a State, according to the Bonded Labour System (Abolition) Act, 1976.

Non-governmental organisations must work closely with Vigilance Committees to ensure that it provides necessary support to the District Administration in the identification, release and rehabilitation of bonded labourers.

The support may be in the form of —

1. State-wide awareness programs on the bonded labour system and the provisions available to combat it.
2. Inspection of local areas prone to bonded labour.
3. Coordination with district magistrate/sub-divisional magistrate to ensure that survivors receive psychosocial care and other rehabilitation needs.



Training session on human trafficking and bonded labour organised with the Telangana State Police Academy





Annexures



Annexure A

F.No. S-11012/01/2015-BL (Pt.)
GOVERNMENT OF INDIA
MINISTRY OF LABOUR AND EMPLOYMENT
DIRECTOR GENERAL LABOUR WELFARE

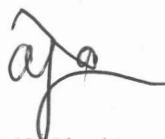
Jaisalmer House, 26, Mansingh Road
NEW DELHI,
Dated the 17th Aug, 2017

Office Memorandum

Sub: Standard Operating Procedure for Identification and Rescue of Bonded Labourer and Prosecution of Offender

The undersigned is directed to forward herewith a brief handout containing Standard Operating Procedures (SOP) for Identification and Rescue of Bonded Labourer and Prosecution of Offenders which has been developed to help implementing agencies in implementation of the BLSA Act and the Central Sector Scheme for Rehabilitation of Bonded Labourer, 2016.

It is requested to kindly ensure that SOP may be made available to all District Magistrates/Collectors/Sub-Divisional Magistrates in the State/Union Territory.



(A.K. Singh)

Under Secretary to the Govt. of India

Chief Secretary (all State Governments)

Administrator (all UT Administrations)

Copy to:

Ministries of Home Affairs, Law & Justice, SJ&E, W&CD, Finance, External Affairs,
Comptroller & Auditor General of India, National Human Rights Commission.

STANDARD OPERATING PROCEDURES

1. Complaint

- 1.1 The DM, SDM or police on receipt of a complaint, whether oral or written, by any person or facts constituting the commission of an offence under the Act, shall reduce it to writing and record, in writing, the time and date of receipt of such a complaint.
- 1.2 The DM, SDM or police shall issue a receipt to the complainant acknowledging that the complaint was recorded.
- 1.3 The DM, SDM or police shall ensure that there is no tip-off or leak of information regarding the rescue, informant or complainant at any stage.

2. Rescue

- 2.1 The DM, SDM or police shall rescue the labourer as soon as possible within 24 hours from the time of complaint received.
- 2.2 The DM, SDM or police shall ensure that the Rescue Team shall be multi-disciplinary and shall be comprised of the following members,
 - a) one representative of the District Magistrate (DM) having jurisdiction not below the rank of Tehsildar to enable such representative to fulfil such duties as provided under BLSA and Central Sector Scheme for Rehabilitation of Bonded Labour – 2016;
 - b) one police officer nominated by the Superintendent of Police;
 - c) the Labour Officer(LO) having jurisdiction to inquire into, enforce and compensate under various labour laws including Minimum Wages;
 - d) adequate number of police officers to secure the premises;
 - e) two or more women officers;
 - f) one police photographer;
 - g) two independent witnesses, at least one of whom should be a woman;
 - h) the complainant;
 - i) members of a civil society organisation or social workers for rescued labourer support including counselling and other roles; and
 - j) any other necessary person.
- 2.3 If the DM, SDM or police has reason to believe that it is necessary to conduct the search and rescue operation without delay for any reason, including danger to the rescued labourer and likelihood of interference with potential evidence, notwithstanding that any member of the rescue team may be unavailable, the DM or SDM shall carry out the search and rescue operation, and intimate any missing member without delay.
- 2.4 The DM or SDM in coordination with the police shall ensure that the rescue location is secured, and separate and protect the labourer from the offender and his associates.
- 2.5 The DM or SDM shall ask brief questions to the labourer in the absence of the offender and in the presence of a member of a civil society organisation or a social



worker to determine whether there are indications of bonded labour. Such brief questions should include questions regarding nature of the advance or other obligation, wage payments and ability of the labourer to leave or work elsewhere.

- 2.6 The DM or SDM shall ensure that the all relevant evidence, such as phone books (directories with the numbers of other traffickers or accomplices), mobile phones, travel tickets and documents, accommodation receipts, bank statements, wage receipts slips and registers, muster rolls, ledger books, bond agreements, notebooks, cash, weapons, locks, ownership documents, lease, license are photographed and seized by the police, and the offender is arrested as per the Code of Criminal Procedure, 1973 (“CRPC”).
- 2.7 The DM or SDM shall ensure that the police prepare a seizure list and rescue memo detailing the identities of the rescued labourer and his contact details, and cause it to be signed by independent and local witnesses.
- 2.8 All police officers and Executive Magistrates shall be competent to make arrest without warrant in accordance with Section 41 and 44 of the Code of Criminal Procedure, 1973 (“CrPC”).
- 2.9 The DM or SDM shall ensure that the labourer are removed from the rescue location, are separated and given adequate protection from the offender and his associates, and are brought to a safe location. The DM or SDM shall also ensure that no bonded labourer is left behind.

3. Inquiry

- 3.1 The DM or SDM shall provide the labourer with immediate assistance, including food, shelter and protection;
- 3.2 The DM or SDM shall ensure that the labour officer initiates proceedings under the Minimum Wages Act, 1948 and the Payment of Wages Act, 1936 where applicable.
- 3.3 In order to issue a release certificate, the DM or SDM shall conduct an inquiry in a free and fair environment, in respect of each labourer separately or with his family, in the absence of the offender and in the presence of a member of a civil society organisation or a social worker as soon as possible but definitely within 24 hours of the rescue. The questions to be asked the labourer should include questions regarding advance or other obligations, wage payments, freedom to travel, seek alternative employment, and sell or purchase goods at market value, and questions regarding other offences against schedule castes or tribes, offenses against children, etc. It shall not be necessary to question the offender or any of his associates. Such an inquiry is not an adversarial inquiry, and the procedures for criminal trials do not apply to such an inquiry.
- 3.4 The DM or SDM shall issue immediately and definitely within 24 hours, a release Certificate to each rescued labourer, including children, found to be bonded labourer even if they are accompanied by families.





3.5 The DM or SDM shall provide each rescued labourer, including children, found to be bonded labourer even if they are accompanied by families, with immediate cash assistance.

3.6 The DM or SDM shall take necessary action for the medical examination of the victim by a registered medical practitioner for the purposes of determination of age, injury or disease incidental to the exploitation and occupational health hazards.

4. First Information Report

- 4.1 If the DM or SDM prima facie finds that offences under laws other than the BLSA have also been committed, he shall ensure that a complaint is made to the police for the registration of a First Information Report ("FIR"), under all relevant sections and laws for the time being in force, including relevant sections under the BLSA, within 24 hours of the date of rescue.
- 4.2 A complaint to the police alleging offences under the BLSA and other laws for the time being in force may be made by any person, including but not limited to the DM or SDM, the victim, family of the victim, NGO or any other person. Further, on receipt of such a complaint, Section 154 CrPC to apply.
- 4.3 Upon a complaint being made to the police, the DM or SDM shall ensure that all relevant documents in his custody, including the Inquiry Form, Release Certificate and Medical Examination Reports, are supplied to the police at the earliest for effective investigation.
- 4.4 The DM or SDM shall ensure that the police complete all the necessary procedure under the CrPC, the BLSA and herein in relation to the labourer, such as taking of statements under Section 161 CrPC, if applicable, as soon as possible, and before the labourer are repatriated / moved beyond the jurisdiction of the said police.

5. Prosecution of Offences

- 5.1 The DM or SDM shall communicate any judgement and sentence along with certified copies of the same to the relevant officials of the DA, including the DM, of the rescue location and rehabilitation location.

6. Summary Trial

- 6.1 The procedure for Summary Trial of Offences under the BLSA is clarified as under:
 - (i) Executive Magistrates conferred by the State Government with the powers of a Judicial Magistrate of the first class to try offences under the BLSA under Section 21(1) of the BLSA ("Designated Magistrate") are empowered to try offences under the BLSA summarily [S. 21(2)].
 - (ii) The commencement of Summary Trial of offences under the BLSA shall be not later than 24 hours from the date of identification or rescue, whichever is later. In neither case shall the commencement of Summary Trial be delayed for want of registration of an FIR.

- (iii) If at any stage during the Summary Proceedings, it appears to the Designated Magistrate that the accused is also chargeable for offences under some other law for the time being in force, other than the BLSA, the Designated Magistrate shall proceed in accordance with the provisions of Section 322 or 323 CrPC, as the case may be.
- (iv) If upon police report, it appears to the Designated Magistrate that the accused is also chargeable for offences under some other law for the time being in force, other than the BLSA, the Designated Magistrate shall commit the entire case along with the case records to the competent court.

The procedure specified in CrPC shall be followed except as stated otherwise in the BLSA.

- 6.2 The Designated Magistrate should conclude the Summary Trial within three months.

7. Trial Proceedings

- 7.1 The Designated Magistrate shall ensure that the victim, labourer or any witness to the commission of any offence under the BLSA shall be provided with protection during the pendency of the trial.
- 7.2 Any complaints raised by the labourer, victim or witness in relation to harassment by the accused or his associates shall be acted upon urgently and the Designated Magistrate shall make orders for the protection of the labourer, victim or witness, such as cancellation of bail, or other appropriate orders.
- 7.3 In case the accused is absconding from trial, proclamation and attachment of property may be initiated.
- 7.4 Copies of case documents shall be made available on application.

8. Evidence

- 8.1 In all proceedings herein, the Designated Magistrate shall record the substance of evidence and particulars as per Section 262(1) CrPC. Such evidence may include documentary evidence, and when necessary, oral evidence.
- 8.2 The Designated Magistrate must make the record of the case in the appropriate form as per Section 263 CrPC.

9. Judgment and Sentence in Summary Trial

- 9.1 The Designated Magistrate shall record a judgement including a brief statement of the reasons for the finding.
- 9.2 Punishment under this procedure shall be as per S. 9, 16-20 of the BLSA.
- 9.3 Essential elements of a judgment upon Summary Trial under the BLSA shall be the following:
 - (a) Serial number of the case;
 - (b) Date of the commission of the offence;
 - (c) Date of the report or complaint;
 - (d) Name of the complainant (if any);



- (e) Name, parentage and residence of the accused;
- (f) The offence complained of and the offence (if any) proved;
- (g) Plea of the accused and his/her examination (if any);
- (h) The finding with reasoning;
- (i) Sentence or other final order with reasons (Sec 9, 16-20 of the BLSA);
- (j) Amount of debt extinguished (if any) (Sec. 6 of BLSA)
- (k) Extent of mortgage freed (if any) (Sec.7 of BLSA)
- (l) Date on which proceedings concluded/terminated.
- (m) Order of committal (if any)

9.4 Proceedings shall be in addition to other civil and criminal proceedings, such as but not limited to proceedings under Minimum Wages Act.

9.5 In addition, the DM or SDM shall ensure that the rescued labourers are provided with other benefits and are repatriated as stated below:

10. Benefits to Labourer

10.1 The DM or SDM shall coordinate with relevant authorities to expedite provision of existing benefits due to the labourer such as benefits under central or state schemes including issuance of the following to the labourer,

- a) Aadhar Card,
- b) Ration Card,
- c) Caste Certificate,
- d) Voter ID,
- e) MNREGA Card
- f) Land patta
- g) Government Health Insurance and
- h) Any other relevant or required document.

10.2 Release Certificates shall be considered as Identity Proof for the labourer.

10.3 The DM or SDM shall provide the labourer or their representative with receipt of any application for provision of any benefit due to the labourer including benefits not included under the BLSA, herein or benefits that are specific to bonded labourer.

10.4 The DM or SDM shall ensure that the local primary health centre of the rehabilitation location medically screens the labourer.

11. Repatriation

11.1 Repatriation shall be subject to the consent of the labourer. The rescuing DM or SDM shall be responsible for repatriation, which must be done at the earliest possible time and in any case, no later than 24 hours from the date of rescue.

11.2 The DM or SDM shall coordinate with both rehabilitation and rescue location's police and District Administration ("DA") for quick and safe transfer, protection and rehabilitation, including,

- a) fooding, shelter, transport and protection,



- b) sending a written request to the local police of the rehabilitation location for protection of the rescued labourer against possible harassment and intimidation by the offender or his associates, and
 - c) sending a written request for rehabilitation of the rescued labourer to the relevant officials of the DA, including the DM, of the rehabilitation location, including,
 - name(s), final address(s), contact detail(s) of the labourer(s),
 - name(s) of the offender(s), if available
 - certified copies of the Identification Form(s) and Release Certificate(s),
 - identity card(s) of the labourer(s), and
 - receipt(s) of any rehabilitation given to the labourer(s).
- 11.3 DM or SDM shall ensure that his representative along with the police accompanies the labourer during such repatriation. At all times, the DM or SDM shall ensure that the offender is not allowed to come into contact with the labourer.
- 11.4 The pendency of investigation or trial in relation to commission of offences under the BLSA shall not stand in the way of repatriation of the labourer and / or his family at any stage.
- 11.5 Where a labourer has been repatriated but, in the opinion of the Designated Magistrate, is later required to be summoned for evidence, the Designated Magistrate should ensure that any expenses incurred by the labourer or witness in this regard are met and that such labourer or witness is given adequate protection during and post trial.
- 11.6 For offences under laws other than BLSA, where statements under Section 161 CrPC are required to be recorded, the DM or SDM shall ensure that the same is done at the earliest, prior to repatriation.



Annexure B

F.NO.15011/6/2009-ATC (Advisory)
GOVERNMENT OF INDIA/BHARAT SARKAR
MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA
NORTH BLOCK NEW DELHI /CS DIVISION

New Delhi, the 09.09.2009

OFFICE MEMORANDUM

Subject: Advisory on Preventing and Combating Human Trafficking in India

Introduction:

The Trafficking in Human Beings (THB) is a crime committed in order to target, lead or drive a human being into an exploitative situation with the aim to make profits. Such exploitation may take many forms, for example commercial sexual exploitation, child labour, forced labour, bonded labour or illegal organ removal etc. The country is witnessing cross-border as well as internal (intra-country) trafficking.

Human Trafficking and Indian Laws:

Trafficking in Human Beings (THB) is prohibited under the Constitution of India under Article 23 (1). Following specific legislations deal with Trafficking in Human Beings (THB)

- Laws relating to trafficking in women and children being administered by the MWCD (wcd.nic.in)
 - i. Immoral Traffic (Prevention) Act, 1956,
 - ii. Prohibition of Child Marriage Act (PCMA), 2006.
- The “Bonded Labour System (Abolition) Act, 1976”, being administered by Ministry of Labour and Employment (labour.nic.in), provides for abolition of the system of bonded labour and the rehabilitation of released labourers. Child Labour (Prohibition and Regulation) Act, 1986 is also being administered by Ministry of Labour.
- Further, commercial dealing in human organs is a punishable offence under the Transplantation of Human Organs act, 1994, being administered by Ministry of Health and family Welfare (mohfw.nic.in). The appropriate authorities appointed under the Act are responsible and empowered to check the illegal activities of human organs traffickers.
- Specific Sections in the IPC, e.g., Sections 372 and 373 dealing with selling and buying of girls for the purposes of prostitution.

‘Public Order’ and ‘Police’ as per the 7th Schedule of the Constitution of India, are State subjects and, as such, detection, registration, investigation and prevention of crime is primarily the responsibility of the State Governments. However, Central Government supplements the efforts of the State Governments by providing policy guidelines, financial assistance for modernization of the State Police Forces in terms of weaponry, communication, equipment, mobility, training and other infrastructure under the Scheme of Modernization of State Police Forces.

A working Group comprising of Directors General of Police of some of the affected States was constituted in 2004 by MHA to study the issues relating to cross border trafficking. The recommendations of this group were sent to the State Governments and they were advised to



evolve a comprehensive strategy for effectively dealing with the problem of trafficking. Also an **“Integrated National Plan of Action to Prevent and Combat Trafficking in Human Beings Specially Women and Children”** (nhrc.nic.in/planofaction.doc), which has been worked out through a consultation process of all related Ministries and other stakeholders, has been adopted by Government of India in the Ministry of Women and Child Development. This plan deals with all aspects of prevention, rescue, registration of cases, investigations, prosecution, conviction, cross border trafficking issues, rehabilitation, repatriation and reintegration of victims etc. Based on these the recommendations of DGPs and the integrated action plan stated above the State Governments may evolve a holistic approach towards combating Trafficking in Human Beings (THB), encompassing all aspects of prevention, rescue and rehabilitation. Convergence should be adopted between various state departments and stakeholders for effective of handling of crime of Trafficking in Human Beings (THB).

Following key points of advice have been worked out in collaboration with the related Ministries of Women and Child Development, Labour and Employment, and Health and family Welfare where the assistance/ action by the State Government/ Police would be required for the effective implementation/ enforcement of laws relating to Trafficking in Human Beings (THB):

1. Constitution of the State Advisory Committee for Preventing and Combating Trafficking of Women and Children for Commercial Sexual Exploitation.

According to the Supreme Court order dated 2/05/09 (Vishal Jeet Vs Union of India), every State Government should set-up a State Advisory Committee for Preventing and Combating Trafficking of Women and Children for Commercial Sexual Exploitation. Ministry of Women & Child Development (MWCD) has already issued an advisory in this regard to all the State Governments. .

2. Implementation of Immoral Traffic (Prevention) Act (ITPA), 1956.

- 2.1. Since ITPA is the main Act that can be used to book trafficking for commercial sexual exploitation, its implementation is essential for counter-trafficking. Under Section 23, the State Government may, by notification in the Official Gazette, **make rules for carrying out the purposes of the Act.** Such rules may be formulated, notified and intimated to MWCD with a copy to MHA.
- 2.2. Under Section 13, the State Government may **appoint ‘Special Police Officers (SPOs)’** and the ‘Non-official advisory bodies’ to advise the SPOs for dealing with offences under the Act.
- 2.3. Under Section 21, the State Governments may set-up ‘Protective homes’ and ‘Corrective institutions’ for ensuring proper implementation of the provisions of the Act. **The information regarding these homes may be circulated to all Police Stations and officers dealing with the trafficking cases.**
- 2.4. Under Section 22-A, the State Government may, by notification in the Official Gazette, and **after consultation with the High Court, establish one or more Courts** for providing speedy trial of the offences under the Act.
- 2.5. It is generally noticed that sections 8 and 20 of ITPA, which focuses on the victims, are more often invoked as a result of which the victim is re-victimized and the exploiters are not punished. It is, therefore, advised that sections 3, 6 and 7 which pertains to pimps, brothel owners, clients who are actual perpetrators of the crimes need to be invoked rather than sections 8 and 20. **Law enforcement agencies need to adopt a victim centric approach in the investigations.**





3. **Implementation of Juvenile Justice Act (JJ Act), 2000:** Juvenile Justice Act provides comprehensive mechanism for care and protection of children including rehabilitation and social integration of children. Therefore, its implementation is essential to address trafficking of children. Following provisions of the Act are concerned with the Home Department/ Police and require action by the State Governments:
 - 3.1. Under Section 62-A, the State Government shall constitute 'Child Protection Units' for the State and districts to fulfill its responsibilities as stipulated under the Act.
 - 3.2. Under Section 63, in each police station, at least one police officer may be designated as the 'Juvenile or Child Welfare Officer' to handle a juvenile or child in coordination with the police.
 - 3.3. Under Section 68, the State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act.
4. **Implementation of Prohibition of Child Marriage Act (PCMA), 2006:** Prohibition of Child Marriage Act (PCMA) was enacted in 2006 repealing Child Marriage Restraint Act, 1929. It is reported that traffickers in some pockets in the country are exploiting evil custom of child marriage to target innocent girls for trafficking. Therefore, it is essential to implement the Act to address this modus operandi of traffickers.
 - 4.1. As per PCMA, State Governments under Section 19 (1), may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act.
 - 4.2. Under Section 16, the State Government may appoint 'Child Marriage Prohibition Officers' to fulfill the mandate as stipulated in the Act. State Governments may intimate the MWCD about the status of appointment of Prohibition Officers and Rules.
 - 4.3. The State Governments are to maintain MIS and send quarterly information on number of cases registered under PCMA and convictions.
 - 4.4. On receiving a complaint about child marriage, police are required to follow the procedure laid down in the Code of Criminal Procedure, 1973, which include registering an FIR and carrying out investigation.
 - 4.5. The offences under PCMA are cognizable and non-bailable, hence, immediate arrest of offenders is necessary.
 - 4.6. Extra vigilance should be maintained during festivals such as 'Akshya Tritha' to ensure that no child marriage takes place.
5. **Capacity building of the State machinery:** Implementation of the legal provisions in relation to applicable Acts- CLPRA, BLSA, IPTA, JJA and IPC involves not only police but many other officials dealing with the Criminal Justice System - notably the executive magistrates, the labour officials, CWC members and in-charges of Homes. Therefore, the State government may initiate a time bound action plan to build the required capacity of the state investigation and prosecution machinery in this regard. Some of the key areas identified for capacity building are listed below.
 - 5.1. Identification of victims of trafficking for the purpose of commercial sexual exploitation, child/bonded/forced labour and for illegal organ removal.
 - 5.2. Recognition of all applicable legal provisions of the law to a case of trafficking (not just one Act or two) by law enforcement machinery.



- 5.3. Understanding of legal and administrative provisions for inter-state and cross border investigation.
- 5.4. Understanding of legal provisions for closure of places of exploitation.
- 5.5. Understanding of legal provisions for confiscation of proceeds of crime.
- 5.6. Understanding of the mechanism in place for victim support and assistance.
- 5.7. Integrated actions on prosecution, prevention and protection by building linkages with other Government departments and agencies, including NGOs.
- 5.8. For capacity building the Bureau of Police Research and Development (BPR&D) (www.bprd.gov.in), at the behest of MHA, has prepared a **training manual on Human Trafficking Handbook for Investigators** and this has been circulated to the States for use in the police Training Institutes. All the training materials have also been uploaded on BPR&D website. BPR&D has already translated the training material in Hindi, Telugu and Marathi languages. 12 Resource Books on ‘Training and Investigation on Anti-Human Trafficking’ prepared as a result of pilot project between MHA and UNODC (www.unodc.org/india/ind_s16.html) have also been uploaded on BPR&D website. These resource materials should be used by State Governments for the capacity building of all agencies involved in prevention of human trafficking.
- 5.9. Also MWCD, in collaboration with National institute of Public Co-operation and Child Development (NIPCCD) and UNICEF, has developed manuals for training of stakeholders such as ‘Judicial Handbook on Combating Trafficking of Women and Children for Commercial Sexual Exploitation’, ‘Manual for Medical Officers for dealing with Child Victims of Trafficking and Commercial Sexual Exploitation’, counseling services for Child survivors of trafficking’, Counseling services for Child survivors of trafficking’, Social workers.
- 5.10. States may organize training/workshops/awareness campaign to sensitize their SHOs/Dy. SP/ACP and other law enforcement agencies towards the crime, safety and security of women and children.
- 5.11. The **Compendium of Best Practices in handling cases of human trafficking** (www.unodc.org/india/ind_s16.html) **has already been circulated** to all the State Governments and UT Administrations for information and appropriate use.

6. Prevention of Trafficking:

- 6.1. It has been noticed that people, especially women and children are vulnerable to trafficking during ‘distress migration’ and from ‘disaster prone areas’- such as during floods, earthquakes, crop failures, riots, terrorist activities etc. Therefore, it is important to establish extra vigilance in this regard around transit points and at borders- inter-district/inter-state and international.
- 6.2. Police should work closely with immigration authorities, Border Security Force (BSF), Railways and other transport authorities, provincial/ territorial and municipal agencies, with Social Services, child welfare authorities and with any NGOs involved in service delivery for spotting and rescuing the victims.
- 6.3. Effective patrolling and vigil at locations prone to trafficking such as highways, dhabas, railway stations and bus stations for suspicious movement of traffickers and victims and monitoring, through involvement of village community, the suspicious/unnecessary movements of strangers in the villages.





- 6.4. Pro-active policing through information exchange with representatives from the local Government, community, NGOs with a view to raise awareness and garner active support of the community.
- 6.5. Periodical checks on transporters to prevent physical transportation of the trafficked persons.
- 6.6. Prevention at the demand area by understanding/ addressing new forms of demand. For example, placement agencies providing domestic child labourers.
- 6.7. Facilitating inter-State collaboration by sharing data on missing children/ kidnappings and suspected offenders. Development of victim and offender profiles on an inter-agency basis.
- 6.8. Sensitization programmes/workshops for police officers/railway police force and prosecutors on various legislations mentioned above in relation to trafficking. State nodal officers may hold periodical meetings to review and monitor the efforts taken to prevent and combat the crime of trafficking.
- 6.9. In case of child trafficking, following provisions also need to be kept in view:-
 - 6.9.1. Identification of children at risk, (e.g. following raids on off-street sites, responding to referrals from other agencies, NGO or members of the public, following up reports of missing children).
 - 6.9.2. Report instances of children in need of protection to relevant child protection agencies. For this purpose the Police Stations could be sensitized.
 - 6.9.3. The development of victim profiling with other agencies.
 - 6.9.4. Undertaking joint interviews with social workers of children identified as victims or potential victims to assess risk and assist in the development of protection plans.
 - 6.9.5. Carry out checks on sponsors and people who claim to be the relatives of children identified as being at risk of trafficking.
 - 6.9.6. Participating in local child protection networks with related organizations (immigration, social services, NGOs, health, education) to develop joint approaches to the issue at local level and contribute to wider forums as appropriate.
 - 6.9.7. If children disappear, initiate missing person's procedures, investigate circumstances and circulate information/ undertake investigations, linking with other agencies as required.
 - 6.9.8. Ministry of Labour & Employment has developed a detailed protocol for prevention, rescue, repatriation, rehabilitation and reintegration of migrant and trafficked child labour. The protocol has been issued to all State Governments for implementation.

7. Investigation & Prosecution:

- 7.1. Standard operating procedures for Investigation have been developed under the pilot project between MHA and UNODC as mention in para 5.8 above, which can be used for effective investigation in trafficking related crimes.
- 7.2. One of the effective means of securing better conviction rates of perpetrators of crime





of trafficking is to base the case on documentary, forensic and material evidence. At present, most of the time, the victim is being used as a witness and more often than not, he/she can easily be intimidated. State Governments are advised to encourage the law enforcement agencies to build full proof investigation against the traffickers, so that, convictions can be guaranteed.

7.3. Use of fast track courts and video conferencing to the extent possible.

8. Rescue and Rehabilitation

8.1. Police should work with other agencies and stakeholders to ensure that those who are rescued or who choose to return are not re-trafficked; this should include a risk assessment of the danger to returning victims (child care authorities would prepare risk assessment for children).

8.2. Identifying support services and referring victims/ potential victims to specialist NGO's and safe accommodation, where these are available. The Ministry of Women and Child Development runs short stay homes Swadhar shelter homes for women in difficult circumstances (wcd.nic.in/Comscheme.doc). These cater to trafficked women/girls rescued or runaway from brothels or victims of sexual crimes who are disowned by family or who do not want to go back to respective family for various reasons. The schemes provide for shelter, food, clothing for women and children below the age of 18 years, counseling, clinical, medical, legal and other support, training and economic rehabilitation and helpline facilities.

8.3. A new scheme - UJJAWALA (wcd.nic.in/Comscheme.doc) – a comprehensive scheme for prevention of trafficking, rescue, rehabilitation, reintegration and repatriation of the victims of commercial sexual exploitation has been launched on 04.12.2007 by the Ministry of women and Child Development which should be effectively used by the State Governments.

9. MHA has already established an Anti Trafficking Cell (ATC) under the Director (SR) which deals with the following major subject matters:

9.1. All matters pertaining to the criminal aspect of trafficking in human beings especially of women and children, which is the fastest growing organised crime and an area of concern.

9.2. To act as the Nodal cell for dealing with the criminal aspect of Human Trafficking in India, hold regular meetings of all States and UTs, communicating various decisions and follow up on action taken by the State Governments.

9.3. To interface with other Ministries like MWCD, MSJE, MEA, MOIA, MOLE, MOL, MOT and NCRB regarding the criminal aspect of human trafficking.

9.4. All matters relating to the UNODC, UNIFEM, their meetings, conferences, conventions, reports etc. in the context of the criminal aspect of Human Trafficking.

10. The Anti Trafficking Nodal Cell of MHA has developed an MIS proforma for the monitoring of the action taken by various State Governments regarding the criminal aspect of human trafficking as well as crime against women. The State Governments are requested to send quarterly information on 1st January, 1st April, 1st July and 1st October of the year in the prescribed proforma.

11. You are requested to issue suitable directions to all concerned under intimation to this Ministry. It is further requested that action taken in this regard may be regularly / periodically





reviewed by the State Governments and UT administrations and a report indicating the present status sent to this Ministry within a month.

12. This advisory is being issued in consultation with the Ministry of Women and Child Development and Ministry of Labour and Employment.

The receipt of this letter may kindly be acknowledged immediately.

Yours faithfully,

-Sd-

(Nirmaljeet Singh Kalsi)

Joint Secretary to the Government of India

Ministry of Home Affairs, North Block

New Delhi - 110001

Tel. No. 23092630

To,

The Chief Secretaries &

The Principal Secretary / Secretary (Home)

All State Governments and Union Territory Administrations – for information and necessary action.

Copy for information and necessary action to:

- i. The DGs / IGs (In-charge of Prisons)/ - All State Governments / UTs for information and necessary action.
- ii. Ministry of Women and Child Development (Mrs. Manjula Krishnan, Advisor & Joint Secretary, MWCD, Ms. P. Bolena, Joint Secretary) Shastri Bhawan, New Delhi.
- iii. Ministry of Labour (Shri S.K. Dev Verman, Jt. Secy.), Shram Shakti Bhavan, New Delhi.
- iv. Ministry of Social Justice and Empowerment (Sh. D.V.S. Ranga, Joint Secretary), Shastri Bhawan, New Delhi.
- v. Ministry of Overseas Indian Affairs (Shri G. Gurucharan, Jt. Secy.), New Delhi.
- vi. Ministry of External Affairs, (Joint Secretary SAARC and Joint Secretary UNES) South Block, New Delhi.
- vii. Chairperson, National Commission for Women, 4, Deen Dayal Upadhyaya Marg, New Delhi-110 002.
- viii. Chairperson, National Commission for Protection of Child Rights, 5th Floor, Chandralok Building, Janpath, New Delhi-110 001.
- ix. Chairperson, National Human Rights Commission, Copernicus Marg, New Delhi.
- x. Director General, NCRB, RK Puram, New Delhi.
- xi. Director General, BPR&D, New Delhi.
- xii. Director General Border Security Force, New Delhi
- xiii. Director, CBI, New Delhi.
- xiv. JS (UT)/ JS (NE) /JS (K), MHA, North Block, New Delhi.
- xv. Under Secretary (Parliament), MHA, North Block, New Delhi.

-Sd-

(Nirmaljeet Singh Kalsi)

Joint Secretary to the Govt. of India

Annexure C (i)

F. No.S-11012/01/2015-BL
Government of India
Ministry of Labour & Employment

Jaisalmer House,
26 Man Singh Road,
New Delhi-110011.

May 18, 2016

OFFICE MEMORANDUM

Sub: Central Sector Scheme for Rehabilitation of Bonded Labourer - 2016

The Centrally Sponsored Scheme for Rehabilitation of Bonded Labourers 1978 was last revised in May 2000. In an evaluation of the performance of the scheme and consultation with stakeholders, it was realised that the scheme was not effective in elimination of Bonded Labour System and a revamp was necessary in the larger public interest. A draft scheme was accordingly prepared by the Ministry and circulated to all State Governments, NHRC, various concerned Ministries of Government of India and the same was also published in the official website of the Ministry for eliciting comments and suggestions from the public and other concerned citizens. Based on the suggestions and inputs received from all quarters including the Social Partners, Central Government has approved the revamped Scheme w.e.f. 17.05.2016. Copy of the revamped Scheme is appended hereto.

2. The revamped scheme shall henceforth be known as a Central Sector Scheme which does not entail State share in the cash component of the rehabilitation package. The non-cash component of the erstwhile CSP scheme will continue as it is, with minor modifications to suit the changing needs of the time.

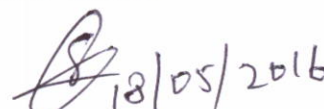
3. I am directed to convey the approval of Central Government of the said scheme for implementation by the State Governments/UT Administrations through their District Magistrates/Collectors/Sub-Divisional Magistrates.

Encl.: As above.

Chief Secretary (all State Governments)
Administrator (all UT Administrations)
District Magistrate/Collector (All)

Copy to:

Principal Secretary to the Prime Minister
Ministries of Home Affairs, Law & Justice, SJ&E, W&CD, Finance, External Affairs,
Comptroller & Auditor General of India
National Human Rights Commission


(J.S. Sidhu)

Deputy Secretary to the Government of India

जे. एस. सिन्धु/J. S. SIDHU
उप सचिव/Deputy Secretary
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Ministry of Labour & Employment
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Central Sector Scheme
for
Rehabilitation of Bonded Labourer - 2016

1. INTRODUCTION

1.1 Bonded Labour System in India is characterized by a long-term relationship between employer and employee, which is usually solidified through a loan or social obligation, and is embedded intricately in India's socio-economic culture marked by class/caste relations. Bonded labour contracts are not purely economic; in India, they are reinforced by custom or coercion in many sectors. The Constitution of India which was adopted by the Constituent Assembly on 26th November 1949 as the Magna Carta of Civil liberties, enshrines under dedicated Article 23, a specific provision declaring traffic in human beings, *begar* and similar forms of forced labour to be punishable offence.

1.2 The Government of India has ratified the ILO Convention C029 on 30th November 1954 which *inter alia* defines forced labour as "all work or service which is exacted from any person under the menace of penalty and for which the said person has not offered himself voluntarily"

1.3 The traditional form of bondage or forced labour in India are known as Adiyamar, Baramasia, Basahya, Bethu, Bhagela, Cherumar, Garru-Galu, Hali, Hari, Harwai, Holya, Jana, Jeetha, Kamiya, Khundit-Mundit, Kuthia, Lakhari, Munjhi, Mat, Munish system, Nit-Majoor, Paleru, Padiyal, Pannayilal, Sagri, Sanji, Sanjawat, Sewak, Sewakia, Seri, Vetti. However, with the passage of time, new dimensions of bondage have crept in under different names. The system is much more intricate than mere economic or labour relations; it reflects the stratified social structure where one or more social groups work without consideration of minimum wages or other right-based labour standards just for the sake of honouring social custom or for fear of possible reprisal in case of non-conformity, which more often than not are characterised by physical violence, ostracisation, etc.

1.4 Emerging forms of forced labour and traffic in human beings, especially of children and other disadvantaged sections of society, require a holistic approach for law enforcement as well as comprehensive rehabilitation mechanism for social, psychological, educational and economic rehabilitation.

2. EVOLUTION OF THE SCHEME

2.1 The issue of 'bonded labour' came to the list of national priority when it was included in the old 20-Point Programme in 1975. The Bonded Labour System (Abolition) Ordinance was promulgated on 25th October, 1975. This was later on replaced by the Bonded Labour System (Abolition) Act, 1976 (hereinafter referred to as the Act). This Act provides for the abolition of the system of bonded labour with simultaneous liquidation of their debts. Since the subject is included in the Concurrent List, the Union Government stepped in to assist the State Governments in their task of rehabilitation of released bonded labourers. Accordingly, Ministry of

CSS for Rehabilitation of Bonded Labourer-2016 w.e.f. 17.05.2016 - (File No.S-11012/01/2015-BL)

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Labour & Employment launched a Centrally Sponsored Scheme for rehabilitation of bonded labourers in May, 1978.

2.2 Originally the Scheme provided for rehabilitation assistance up to a ceiling limit of Rs. 4000/- per bonded labour to be equally shared by Central Government and State Governments on (50:50) basis. This amount was raised to Rs.6250/- w.e.f 1.2.86; and to Rs.10,000/- w.e.f. 1.4.95. Out of this, Rs.1000/- was to be given as subsistence allowance to meet travel expenses etc. to the state of origin, in case the released bonded labour was to be repatriated to his or her native place/ State or for their subsistence until they are rehabilitated. With effect from 1.4.1999, only Rehabilitation assistance was enhanced to Rs. 20,000/-. The scheme was last revised in May 2000 wherein survey component, awareness generation activities and evaluation studies were included as additional items in the existing scheme.

3. OVERVIEW OF PERFORMANCE OF THE SCHEME AND NEED FOR REVISION

3.1 From the year 1978 to 2014-15, the Central Government has released ₹81.826 crores towards its share of rehabilitation assistance in respect of 280213 released bonded labourers in the entire country. The State Governments have contributed equal amount i.e. ₹81.826 crores thus taking the total amount to about ₹ 164 crores. The annual average expenditure has thus remained at the level of ₹2.21 crore. It has become a regular feature to surrender money under this scheme in the absence of adequate proposals from the States and operation of the scheme remained restricted to only 18 states.

3.2 Evaluation studies and other field level inputs indicate certain shortcomings in the existing scheme which *inter alia* includes: (i) Lack of regular monitoring; (ii) No mechanism to monitor court cases and convictions; (iii) Inadequate and unattractive rehabilitation package; (iv) Lack of flexibility of the scheme to address the needs of special category beneficiaries such as children including orphans, differently abled, trans-genders, people rescued from organised and forced begging rings and women and children rescued from trafficking and sexual exploitation including prostitution; (v) Lack of institutionalized mechanism to keep an account of the other major benefits listed in the existing scheme such as agricultural land, dwelling unit, skill training, education etc.; and (vi) Ineffectiveness of awareness generation camps. Hence, there was a strong need to update the scheme for making it more effective.

4. CONSULTATION WITH STAKEHOLDERS & REVISION

4.1 Accordingly, Ministry of Labour & Employment conducted an in-depth study of all the operational limitations as listed above. Important stakeholders such as National Human Rights Commission, International Labour Organization, NGOs and activists working for bonded labours, UNESCO and other intellectuals were consulted for charting out the broad contours of the revised scheme. The draft scheme with approval of the competent authority was circulated for Inter-Ministerial and stakeholder consultation and copy of the same was also made available on the Ministry's website for eliciting views of the public. The draft was also circulated to all

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नई दिल्ली/New Delhi

State Governments and Union Territories. The draft scheme duly incorporating the views of stakeholders was considered by the Standing Finance Committee (SFC) for consideration and approval. The SFC memorandum was appraised by the Ministry including the IFD by circulation and approved by the Hon'ble LEM as per norms of delegation of financial powers.

4.2 The revised scheme incorporates all relevant inputs and comments of stakeholders and addresses all the operational issues of the existing scheme in a holistic manner. Hereafter, Ministry of Labour & Employment and State Governments will follow the below mentioned guidelines for administration of the Bonded Labour Rehabilitation Scheme:

5. REVISED SCHEME AND GUIDELINES

(i) The revised Scheme shall be a Central Sector Scheme and shall come into effect from 17th May, 2016. The State Governments shall not be required to pay any matching contribution for the purpose of cash rehabilitation assistance.

(ii) The Rehabilitation package shall be Rs.1,00,000/- per adult male beneficiary. Beneficiary shall have the option to either deposit it in an annuity scheme or receive cash grant. The District Administration will assess the cash requirement of the beneficiary and exercise its best judgement in the matter and put the money under annuity scheme with the consent of the said adult male.

(iii) For special category beneficiaries such as children including orphans or those rescued from organised and forced begging rings or other forms of forced child labour, and women, the amount of rehabilitation assistance shall be ₹2 lakhs out of which at least ₹1,25,000/- shall be deposited in an annuity scheme in the name of each beneficiary and the balance amount shall be transferred to the beneficiary account through ECS.

(iv) In cases of bonded or forced labour involving extreme cases of deprivation or marginalization such as trans-genders, or women or children rescued from ostensible sexual exploitation such as brothels, massage parlours, placement agencies etc., or trafficking, or in cases of differently abled persons, or in situations where the District Magistrate deems fit, the rehabilitation assistance shall be ₹3 lakhs, out of which at least ₹2 lakhs shall be deposited in an annuity scheme in the name of each beneficiary and ₹1 lakh shall be transferred to the beneficiary account through ECS.

(v) The above benefits would be additional to other land and housing elements, etc. of the original scheme as mentioned below:

- (1) Allotment of house-site and agricultural land;
- (2) Land development;
- (3) Provision of low cost dwelling units;
- (4) Animal husbandry, dairy, poultry, piggery etc.;
- (5) Wage employment, enforcement of minimum wages etc.;

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- (6) Collection and processing of minor forest products;
- (7) Supply of essential commodities under targeted public distribution system; and
- (8) Education for children.

(vi) In cases where, on the conclusion of the summary trial, the District Magistrate(DM)/Sub-Divisional Magistrate (SDM) concludes that the alleged bonded labourer is, in fact, not in a condition of bondage, but requires socio-economic assistance, the DM/SDM, may provide state assistance under any other scheme administered by them.

(vii) In cases where, the DM/SDM find that immediate assistance is necessary for care and protection of the rescued persons during the pendency of the summary trial, such assistance including fooding, lodging, medical assistance, legal aid, provisions for victim's or witness' protection, etc., shall be provided under any other law or scheme forthwith, notwithstanding the entitlements prescribed under this scheme.

(viii) State Governments/UTAs shall be required to concentrate their efforts on the following activities:

(a) The District Administration in a convergence approach shall undertake measures for providing safe and secure environment for the capacity building of child bonded labourers in coordination with all relevant Government departments. Accordingly, facilities for, ensuring their proper education, psycho social counselling short stay home till education upto class 12th, skill development shall be an integral component of the rehabilitation package.

(b) For addressing the special needs of female freed bonded labourers, State Government shall also provide financial and other assistance for marriage, apart from other capacity building measures mentioned at sub para (a).

(c) For addressing the needs of the disabled persons, special care should be made available by the State as per national policy for disabled people apart from other capacity building measures mentioned at sub para (a) and (b).

(d) For adult bonded labour who do not come under any of the above categories, employable skill development training shall be a compulsory element of rehabilitation.

(ix) The benefits prescribed hereinbefore shall be, in addition to, other cash or non-cash benefits which a beneficiary under this scheme is entitled to, by or under any other scheme or law applicable for the time being in force.

(x) The amount of assistance for survey of bonded labourers shall be ₹4.50 lakh per district. This amount can be utilised to finance the NGO efforts for identification of bonded labour as per State Government norms. Central Government will

CSS for Rehabilitation of Bonded Labourer-2016 w.e.f. 17.05.2016 - (File No.S-11012/01/2015-BL)

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reimburse this amount upon satisfactory performance in each identification project.
The component of assistance shall be as per the following table:

S.No.	Cost involved in survey	Funds Permissible
1.	Cost of printing of questionnaire (average 2000 questionnaires @ ₹5 each)	₹10,000
2.	Costing of imparting training to investigators/field staff for collecting information (payment to 10 investigator/field staff @ ₹500/- per day to each for 5 days (₹5000 x 5)	₹25,000
3.	Cost of collecting primary data from field (payment to 10 investigators/field staff @ ₹500/- per day to each for 2 months (₹5000 x 60 days)	₹3,00,000
4.	Cost of editing, tabulation and analysis of primary data (payment to 2 Research Assistant @ ₹20000/- per month to each for 2 months (₹40000 x 2 months)	₹80,000
5.	Cost of computerisation of data/information	₹35,000
	Total	₹4,50,000

(xi) The expenditure on awareness generation shall be reimbursed on case by case basis subject to maximum limit of ₹10 lakh per State per annum, as per the following components:

S.No.	Cost components	Funds Permissible
1.	Cost of campaigning and telecast of various audio visual inputs through AIR, Doordarshan, Song and Drama Division, etc.	₹7 lakh
2.	Campaigns through local newspapers	₹1 lakh
3.	Cost of performance by folk cultural troupes including cost of travelling	₹2 lakh
	Total	₹10 lakh

(xii) The existing norms of grants of ₹1 lakh for evaluatory studies shall be maintained as such.

S.No.	Cost components	Funds Permissible
1.	Formulation and printing of questionnaire for collecting information from various Departments & who are providing grants/loans for the purpose of effective	₹8,000.00

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	rehabilitation of bonded labourers including cost of mailing of questionnaire	
2.	Analysis of data by 2 Research Assistants-cum-computer operator (payment @ ₹9,000/- per month for 2 months) (18,000 x 2 months)	₹36,000.00
3.	Writing of reports by one Research Officer (payment @ ₹18000/- per month for 2 months) (18,000 x 2 months)	₹36,000.00
4.	Printing and binding of the report (20 original copies)	₹10,000.00
5.	Misc. expenses including travelling expenses	₹10,000.00
	Total	₹1,00,000.00

(xiii) A Bonded Labour Rehabilitation Fund shall be created at the District level by each State with a permanent corpus of at least Rs.10 lakhs at the disposal of the District Magistrate which should be renewable. This fund will be utilised for extending immediate help to the released bonded labourers. The entire penalties recovered from the perpetrators of the bonded labour upon conviction, may be deposited in this special fund.

(xiv) Immediate assistance of at least ₹5,000/- shall be provided by the District Administration to the rescued person out of the District Bonded Labour Rehabilitation Fund at the disposal of the District Magistrate. Where the DM is satisfied that a particular rescued person requires more than Rs.5,000, he or she may disburse such higher amount as deemed fit, but limited to the maximum entitlement prescribed under this scheme. Any such advance amount shall be deducted from the Central cash assistance amount.

6. SUBMISSION OF PROPOSAL TO THE CENTRAL GOVERNMENT

6.1 The District Magistrate shall submit claims to the District NCLP (National Child Labour Project) Society, set up under the revised guidelines of the NCLP Scheme 2016, in the prescribed proforma, along with documents as specified in the check list (Annexure I and II).

6.2 Each such proposal shall have (i) details of cash and non-cash assistance and rehabilitation facilities provided by the State Government (Annexure-III); and (ii) the quantum of penalty/imprisonment awarded to the accused in the Summary Trial as provided under the Act.

6.3 In cases where the Summary Trial under Sec 21 of the Act has not been concluded as per Rules, but the DM/SDM has arrived at a prima facie finding and proof of bondage, then the proposal for cash assistance shall not be stopped for want of details of conviction. However, final disbursement of case assistance shall be made upon proof of bondage and other legal consequences as per judicial process.

6.4 Upon receipt of claims, the District NCLP Society will then scrutinise all documents and submit its proposals, from time to time, to the Central Government, i.e. Ministry of Labour and Employment.(MoLE). The claims shall be furnished under the Major Head 2230/2552 as the case may be.

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7. Release of Funds

7.1 As per modalities of release of funds approved by the Ministry of Finance, admissible reimbursement under the revised scheme, will be released by MoLE, directly to the District NCLP (National Child Labour Project) Society, and the District Project Society in turn will release the fund including the interest, to the implementing agencies which shall include the district administration, for the purpose of the Bonded Labourer Rehabilitation Scheme forthwith.

7.2 The account of District NCLP Society in respect of the BLR Scheme shall be subject to the same audit norms as applicable to the NCLP scheme. Any future alterations in release of fund and accounting procedures by Central government for the NCLP scheme shall be equally applicable *mutatis mutandis* to the BLR Scheme.

7.3 Wherever the District NCLP society does not exist, the Ministry shall immediately, but not later than 30 calendar days reckoned from the date of notification of this scheme, notify a new NCLP society under the NCLP scheme.

8. Implementation and Monitoring

8.1 The implementation and monitoring of the BLR scheme shall be carried out by the Central Monitoring Committee, prescribed under the NCLP scheme, but with JS/DG(LW) as member-convenor for the purpose of BLR Scheme.

8.2 At the State level, the same implementation machinery for NCLP scheme shall also be responsible for implementation of the revised BLR Scheme.

8.3 At the district and sub-divisional level the same implementation machinery for NCLP scheme shall also be responsible for implementation of the revised BLR Scheme assisted by the Vigilance Committees, as prescribed under the Act and Rules.

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Ministry of Labour & Employment
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Central Sector Scheme for Rehabilitation of Bonded Labourer -2016

Revised performa for details of Bonded Labour

I. IDENTIFICATION PARTICULARS

- i. Name :
- ii. Father/Mother's Name :
- iii. Gender: Male/ Female/ Other
- iv. Age :
- v. Whether special/ other category* : Y/N
- vi. Whether physically disabled : Y/N
- vii. If yes, details thereof :
- viii. Village :
- ix. Taluk :
- x. Block :
- xi. District :
- xii. State :
- xiii. Aadhar and UWIN (NSS) No. (if available) :

**Special/ Other category as specified at para 5 (iii) and 5 (iv) of this Scheme*

II. PARTICULARS OF FAMILY MEMBERS:

Sl. No.	Name	Relation to Respondent	Age	Sex	Education	Occupation	Remarks

III. PARTICULARS OF OCCUPATION:

- i. Nature of Occupation
- ii. Duration of the Occupation
- iii. Whether free to work elsewhere or to quit the job with present employer : Y/N
- iv. If no, specify the reasons

IV. WORKING CONDITIONS:

- i. Wages agreed upon by the Employer
- ii. Wages paid in kind (per day/week/month/year)
- iii. Wages paid in cash (per day/week/month/year)
- iv. Any other non-cash/kind benefit received from the employer
- v. Details of the Punishment for absence or slackness in work
- vi. Daily hours of work

V. NATURE OF BONDAGE [in lieu of advance/ debt]

- i. Amount of loan/Advance received (cash/kind):

CSS for Rehabilitation of Bonded Labourer-2016 w.e.f. 17.05.2016 - (File No.S-11012/01/2015-BL)

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Ministry of Labour & Employment
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नई दिल्ली / New Delhi

- ii. Rate of Interest:
- iii. Purpose of borrowings:
- iv. Who has taken the loan and his relation with the Respondent:
- v. Mode of repayment:
- vi. Number of year working for the loan taken
- vii. When will the loan get repaid along with interest
- viii. Is any other member of the family also bonded: Yes /No
If yes, please indicate his/her:

Name	Age	Duration of Work	Loan Taken	Interest, if any	Hours of work	Wages paid

VI. PARTICULARS OF ASSETS [of the Bonded Labour]:

- i. Land owned :
- ii. Milch animals/bullocks/sheep/goat/poultry :
- iii. Does he/she live in own homestead or in employer's land :
- iv. House owned or rented :
- v. Education Level :

VII. PARTICULARS OF EMPLOYERS

- i. Name & Address :
- ii. Father/Mother's Name :
- iii. Occupation :
- iv. No. of bonded labourers under the same employer :
- v. Aadhar No. :
- vi. Any instance of beating/commission of atrocity/violence by the employer as reported to the Vigilance Committee (please specify) :

VIII. RELEASE AND REHABILITATION

- i. Whether the respondent is aware of the provision of the BLS(Abolition) Act :
- ii. Whether the respondent is aware of the scheme for rehabilitation of bonded labour :
- iii. Whether the respondent was released in the past under the BLS (Abolition) Act and Rules:
- iv. Whether the respondent has received the benefit under the BLS (Abolition) Act and Rules:

VERIFICATION

It is certified that the facts stated in the above questionnaire are true to the information provided by the respondent which has been read over and explained to him in his mother tongue.

Date :

Place :

**Signature of the Surveyor
(Name)**

CSS for Rehabilitation of Bonded Labourer-2016 w.e.f. 17.05.2016 - (File No.S-11012/01/2015-BL)

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उप सचिव/Deputy Secretary
श्रम एवं रोजगार मंत्रालय
Ministry of Labour & Employment
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

**Central Sector Scheme for Rehabilitation of Bonded Labourer -
2016**

Proposal for Release of Central Assistance for Rehabilitation of Bonded Labourers:

- i. Number of the labourers required to be rehabilitated :
(Release certificate should be attached for every bonded labour rehabilitated)
- ii. Category wise break-up of Beneficiaries as General, OBC, SCs and STs and Special Categories wise break-up of beneficiaries as adult male, women, transgenders, differently abled persons, minor boys, minor girls, persons released from special categories in the below mentioned table:

S.No.	Gender	Special Category	Number
1.	Male	Adult	
		Boys below 18	
		Total	
2.	Female	Adult	
		Girls below 18	
		Total	
3.	Special/ Other as specified in para 5 (iii) and 5(iv)	Adult male	
		Adult female	
		Children below 18	
		Differently-abled persons	
		Trans-gender	
		Total	

* "Person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority, medical authority is Hospital funded by Central or State Government. The medical certificate issued by medical authority should be provided with the proposal.

- iii. Total amount of Central Assistance Required:

S. No.	Category	Total Number	Prescribed limit as per the bonded labour scheme (in Rs.) (in 000')	Total Amount
1	Adult male member		100	
2	Adult Female/ Minor boys and Girls		200	
3	Special/ Other		300	

CSS for Rehabilitation of Bonded Labourer-2016 w.e.f. 17.05.2016 - (File No.S-11012/01/2015-BL)

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जे. एस. सिद्धु/J. S. SIDHU
उप सचिव/Deputy Secretary
श्रम एवं रोजगार मंत्रालय
Ministry of Labour & Employment
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

	category as specified at para 5 (iii) and 5 (iv) of this Scheme			
	Total			
	Balance available at Bonded Labour Rehabilitation Fund*			

* Bonded Labour Rehabilitation Fund will be used to provide immediate financial assistance to the rehabilitate bonded labour with at least Rs.10.00 lakh as a corpus for this fund.

- iv. Name of the District (s) where these bonded labourers (category wise) have been identified :

S.No.	Name of the District (s)	Name of the State	Number of bonded labour		
			Identified	Released	Rehabilitated
1					
2,3,..					
Total					

- v. Mode of identification :

- vi. Whether the rehabilitation scheme has been formulated and approved by the competent authority? :

(copy of the scheme must be attached)

- vi. The detailed statement of assistance provided by State Government/UT (abstract with detailed names of bonded labour to be provided):

- vii. Whether any utilization certificate for Central Assistance released in the preceding years are pending : Yes/No

If yes indicate the details of pending utilization certificates :

Name of the State/UT						
Sl. No.	Component for Central Assistance received	Name of the District (s)	Year in which funds released	Amount of Central Assistance (Rs.)	Amount for which Utilization certificates is submitted (Rs.)	Reasons for non-submission of utilization certificates
1						
2,3, so on						
Total	Name of the State/UT					

CSS for Rehabilitation of Bonded Labourer-2016 w.e.f. 17.05.2016 - (File No.S-11012/01/2015-BL)

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जे. एस. सिन्हा/J. S. SIDHU
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Ministry of Labour & Employment
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

Central Sector Scheme for Rehabilitation of Bonded Labourer - 2016

Format for Release Certificate BL Case NO.....

(Order of the JMFC/JMSC under Section 12 of the Bonded Labour System
(Abolition) Act, 1976)

A Colour passport
signed photograph
of the bonded
labour released
should be passed in
this box

1. Name :
2. Father/Mother's Name :
3. Age :
4. Whether special category* : Y/N
5. If yes, details thereof :
6. Whether physically disabled# : Y/N
7. If yes, details thereof :
8. Address where bonded labour is identified :
9. Male/Female/trans-gender:
10. Aadhar/UWIN(NSS) No. (if available) :
11. Jan Dhan A/c No with IFSC code:
12. Address of Bonded Labour
13. Name of the Captor/Bonder :
14. Aadhar Card no. of Captor/Bonder :
15. Address of Captor/Bonder :
16. Date of conviction & Release Order :
17. Quantum of Punishment under Chapter VI:
18. Amount of Debt Extinguished u/s 6:
19. Extent and nature of property freed u/s 7:

** Special/ Other category as specified at para 5 (iii) and 5 (iv) of this Scheme*

"Person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority, medical authority is Hospital funded by Central or State Government.

Given under my hand and seal on date _____

Signature

Name

District Magistrate/ Sub- Divisional Magistrate

District....., State.....,

Seal

CSS for Rehabilitation of Bonded Labourer-2016 w.e.f. 17.05.2016 - (File No.S-11012/01/2015-BL)

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जे. एस. सिन्धु/J. S. SIDHU
उप सचिव/Deputy Secretary
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Ministry of Labour & Employment
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

Central Sector Scheme for Rehabilitation of Bonded Labourer - 2016
Proposal for Release of Central Assistance for Conducting Survey of Bonded Labourers:

- i. Name of District (s) where survey will be conducted :
- ii. Duration of Survey with timelines for its completion :
- iii. Whether any survey was conducted in the past, in the district (s) : (Y/N)
 - (a) if yes indicate year and month of the survey:
 - (b) if no, the reasons :
- iv. Name of the agency (ies) which conducted survey in the past:
- v. Name of the agency (ies) which will be conducting survey:
- vi. Item wise breakup of the cost of the proposed survey per sensitive district :

S. no.	Item	Cost involved
1	Cost of printing of questionnaire (average 2000 @ ₹5 each = ₹10,000)	
2	Costing of imparting training to investigators/field staff for information (payment to 10 investigator/field staff @ ₹500/- per day to each for 5 days (₹5000 x 5 = ₹25000)	
3	Cost of collecting primary data from field (payment to 10 investigators / field staff @ ₹500/- per day to each for 2 months (₹5000 x 60 days = ₹3,00,000)	
4	Cost of editing, tabulation and analysis of primary data (payment to 2 Research Assistant @ ₹20000/- per month to each for 2 months (₹40000 x 2 months = ₹80,000)	
5	Costing of imparting training to investigators/field staff (₹35,000)	
	Total	

- vii. Whether previous survey, if conducted any, have been done within one year of releasing Central assistance: (Y/N)
- viii. If yes, then details of findings, recommendations to be provided
- ix. Whether reports of the survey conducted in the past have been sent to Ministry of Labour & Employment, Government of India: (Y/N)
 - (a) If yes, details thereof
 - (b) If no, reasons thereof
- x. Whether any utilization certificate for Central Assistance released in the preceding years are pending : Yes/No
 - (a) If yes indicate the details of pending utilization certificates :

CSS for Rehabilitation of Bonded Labourer-2016 w.e.f. 17.05.2016 - (File No.S-11012/01/2015-BL)

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जे. एस. सिधु / J. S. SIDHU
 उप सचिव / Deputy Secretary
 श्रम एवं रोजगार मंत्रालय
 Ministry of Labour & Employment
 भारत सरकार / Govt. of India
 नई दिल्ली / New Delhi

Central Sector Scheme for Rehabilitation of Bonded Labourer - 2016

Proposal for Availing Central Assistance for Awareness Generation Activities:

- i. List of activities proposed to be undertaken for awareness generation:
- ii. Name of the agencies which will undertake awareness generation activities. Whether it is Government or Private:
- iii. Item-wise break-up of the cost involving in awareness generation activities.

S. no.	Item	Cost involved (in ₹)
1	Cost of Campaigning and telecast of various audio visual inputs through AIR, Doordarshan, Song and Drama Division, etc. (max. fund permissible is ₹7 lakh)	
2	Campaigns through local newspapers (max. fund permissible is ₹1 lakh)	
3	Cost of performance by folk cultural troupes including cost of travelling (max. fund permissible is ₹2 lakh)	
	Total	

- iv. Whether awareness generation activities have been done within 6 months of releasing Central assistance in preceding years. (Y/N)
- v. Whether reports of the awareness generation activities conducted in the past have been sent to Ministry of Labour & Employment, Government of India: (Y/N)
 - (c) If yes, details thereof
 - (d) If no, reasons thereof
- vi. Whether any utilization certificate for Central Assistance released in the preceding years are pending : Yes/No
 - (b) If yes indicate the details of pending utilization certificates :

CSS for Rehabilitation of Bonded Labourer-2016 w.e.f. 17.05.2016 - (File No.S-11012/01/2015-BL)

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जे. एस. सिन्हा/J. S. SIDHU
उप सचिव/Deputy Secretary
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Ministry of Labour & Employment
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

Central Sector Scheme for Rehabilitation of Bonded Labourer - 2016

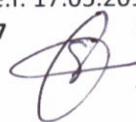
Proposal for Availing Central Assistance for Evaluation Studies:

- i. List of activities proposed to be undertaken for Evaluation Studies;
- ii. Name of the agencies which will undertake the evaluation. Whether it is Government or Private;
- iii. Item-wise break-up of the cost involving in evaluation studies:

S.No.	Cost components	Cost involved
1.	Formulation and printing of questionnaire for collecting information from various Departments & who are providing grants/loans for the purpose of effective rehabilitation of bonded labourers including cost of mailing of questionnaire (Rs.8,000)	
2.	Analysis of data by 2 Research Assistants-cum-computer operator (payment @ ₹9,000/- per month for 2 months) (18,000 x 2 months= Rs.36,000)	
3.	Writing of reports by one Research Officer (payment @ ₹18000/- per month for 2 months) (18,000 x 2 months= Rs.36,00)	
4.	Printing and binding of the report (20 original copies) (Rs. 10,000)	
5.	Misc. expenses including travelling expenses (Rs.10,000)	
	Total	

CSS for Rehabilitation of Bonded Labourer-2016 w.e.f. 17.05.2016 - (File No.S-11012/01/2015-BL)

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जे. एस. सिन्धु/J. S. SIDHU
उप सचिव/Deputy Secretary
श्रम एवं रोजगार मंत्रालय
Ministry of Labour & Employment
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

Central Sector Scheme for Rehabilitation of Bonded Labourer - 2016

Form of Utilisation Certificate

Form 19-A of GFR

Sl. No.	Letter No. and Date (attach copy)	Amount
1.		
2,3,...		
	Total	

Certified that out of Rs.....of grant-in-aid sanctioned during the year _____ in favour of _____ Under the Ministry of Labour and Employment letter no _____ dated the _____ given in the margin, a sum of Rs. _____ has been utilized for the purpose of Central Sector Scheme for Rehabilitation of Bonded Labour for which it was sanctioned and the balance of Rs. _____ remaining unutilized at the end of the year has been surrendered to the Ministry of Labour and Employment, Government of India vide letter no. _____ dated the _____/will be adjusted towards the grants-in-aid payable during the next year _____.

2. Certified that I have satisfied myself that the conditions on which the grants-in-aids were sanctioned have been duly fulfilled/are being fulfilled and that I have exercised the following checks to see that the money was actually utilized for the purpose for which it was sanctioned.

Kinds of Checks exercised.*

- 1.
- 2.

Signature of the Chairperson of District NCLP Society

Designation.....

State Govt./UT Administration

Date_____

Seal

CSS for Rehabilitation of Bonded Labourer-2016 w.e.f. 17.05.2016 - (File No.S-11012/01/2015-BL)

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जे. एस. सिन्धु/J. S. SIDHU
उप सचिव/Deputy Secretary
श्रम एवं रोजगार मंत्रालय
Ministry of Labour & Employment
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

Annexure-III

Central Sector Scheme for Rehabilitation of Bonded Labourer - 2016

<u>Detailed Abstract of Assistance provided by State/District Administration to Released Bonded Labourers</u>											
Ministry of Labour and Employment sanctioned letter No. _____ dated _____ Amount of _____											
S. No.	Name of the freed Bonded Labour	No. and Date of BL case as per release Certificate	Quantum of punishment to the Convict/ Accused	Benefits provided by State Government (in kind) and its monetary value and cash component in case of educational assistance							Immediate Cash Assistance provided out of District BLR Fund
				House/ site	Agri. land	Land Develop ment	AH/Dairy/ Poultry etc.	Minor forest products	Ration	Edu. Asst.	
1											
2											
3											
Total											

Signature of the Chairperson of District NCLP Society

Designation.....

State Govt./UT Administration

Date_____

Seal

CSS for Rehabilitation of Bonded Labourer-2016 w.e.f. 17.05.2016 - (File No.S-11012/01/2015-BL)

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जे. एस. सिन्धु/J. S. SIDHU
उप सचिव/Deputy Secretary
श्रम एवं रोजगार मंत्रालय
Ministry of Labour & Employment
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

Annexure C (ii)

F. No. S-11012/01/2015-BL
Government of India
Ministry of Labour & Employment

Jaisalmer House, 26, Mansingh Road
New Delhi

Dated 17.01.2017

OFFICE MEMORANDUM

**Subject: Central Sector Scheme for Rehabilitation of Bonded Labour-2016-
Enhancement of the amount of immediate financial assistance-reg.**

Kind reference is drawn to Para 5 (xiv) of the Central Sector Scheme for Rehabilitation of Bonded Labourer 2016 forwarded by this Ministry vide its OM of even no. dated 18th May, 2016 wherein it has been stipulated that immediate assistance of Rs. 5,000/- shall be provided by the District Administration to the rescued person out of the District Bonded Labour Rehabilitation Fund at the disposal of the District Magistrate.

2. In this regard, it is conveyed that the Central Government has decided to enhance the immediate financial assistance from Rs. 5,000/- to Rs. 20,000/- with immediate effect.


(A.K. Singh)

Under Secretary to the Government of India

To

- (i) Chief Secretary (All State Governments)
- (ii) Administrator (All UT Administrations)
- (iii) District Magistrate/ Collector (All)

Copy for information to:

- (i) Principal Secretary to the Prime Minister
- (ii) Ministries of Home Affairs, Law & Justice, Social Justice & Empowerment, Women & Child Development, Finance and External Affairs
- (iii) Comptroller & Auditor General of India
- (iv) National Human Rights Commission

Annexure C (iii)

F.No. S-11012/01/2015-BL (Pt.)
GOVERNMENT OF INDIA
MINISTRY OF LABOUR AND EMPLOYMENT
Director General Labour Welfare

Jaisalmer House, 26, Mansingh Road
NEW DELHI,

Dated June 23, 2017

To

The Chief Secretary (all State Governments)
The Administrator (all UT Administrations)
The District Magistrate/The Collector (All)

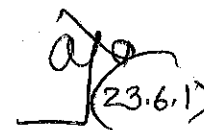
Subject: - Modifications in the Central Sector Scheme for the Rehabilitation of Bonded Labour, 2016 – regarding.

On the basis of feedbacks received from various stakeholders and with the approval of the Competent Authority, certain modifications have been made in the Central Sector Scheme for the Rehabilitation of Bonded Labour, 2016, as mentioned below:

Sl. No.	Gist of existing provisions	Amended provisions
1.	Central Government will reimburse the expenditure made by the States on Survey, Awareness Generation and Evaluatory Studies up to the financial limits prescribed in the Scheme [Para 5(x, xi, xii) of the 2016 Scheme].	Central Government will give 50% of the amount required for conducting Survey, Awareness Generation and Evaluatory Studies in advance. A State may conduct survey once in every three years per sensitive district. A State may conduct five Evaluatory Studies per year.
2.	District Magistrate will submit financial claim to the district NCLP Society which in turn will submit the demand to the Central Government. The Central Government will release funds to the District NCLP Society for onward release to the District Administration. [Para 6 & 7 of the 2016 Scheme]	The fund release architecture in operation prior to 2016 Scheme will be followed and the existing NCLP route has been done away with in view of the fact that many of the districts of a State do not have NCLP Society. The District Administration will send the financial demand to the State's concerned Ministry/ Department dealing with the BLR scheme and the State Ministry/ Department will send the proposal to the Central Government. Routing of proposals and release of fund

		through the State's Ministry/Department will be helpful both for the Centre and the State in monitoring the implementation of the Scheme.
3.	Immediate assistance of Rs. 20,000/- (increased from 5 thousand to 20 thousand w.e.f. 17.01.2017) to be provided by the District Administration to the rescued person out of the District Bonded Labour Rehabilitation Fund linked to conviction of the accused. [Para 5(xiv)]	Immediate assistance upto Rs. 20,000/- may be provided to the rescued bonded labour by the District Administration irrespective of the status of conviction proceedings.
4(i).	The Format for Release Certificate appended to the 2016 Scheme does not capture the caste category of the rescued bonded labourer	The entry at S. No. 1 of the Format for Release Certificate shall be substituted with the following expression: "1. Name and Caste Category of the rescued bonded labourer:" (It is necessary as the budget has separate provision for SC and ST)
4(ii)	The Release Certificate requires date of conviction and release order (<i>meaning thereby that a Release Certificate is to be issued after the conviction proceeding has concluded</i>).	So as to enable issuance of Release Certificate at the time of release of rescued bonded laborer prior to conclusion of conviction proceedings, it has been decided to do away with replace the existing entries at S. no. 16 to 19 in the Format for Release Certificate .

2. It is requested to ensure that the modification in the 2016 Scheme as mentioned above are circulated among all concerned.


(23.6.19)

(A.K. Singh)

Under Secretary to the Govt. of India

E-mail: ajay.kumar67@nic.in

Copy for information to:

- (i) Principal Secretary to the Prime Minister
- (ii) Ministries of Home Affairs, Law & Justice, Social Justice & Empowerment, Women & Child Development, Finance, External Affairs
- (iii) National Human Rights Commission
- (iv) Comptroller & Auditor General of India

Annexure D

Rc. No. 146487/HR Cell/2016

Office of the
Director General of Police
Tamil Nadu, Chennai - 4.

Dated: 17.12.2016

CIRCULAR MEMORANDAM

Sub:- Police - Bonded Labour System (Abolition) Act
1979 - Filing of vital documents before the Court -
Instructions issued - Regarding.

Ref:- Government letter No.12973/ADW6/2016-4,
Dated 10.11.2016

&&&&&&&&

In the reference cited letter, the Government have stated that Police officials fail to attach necessary documents, related to bonded labour cases, upon submitting their final reports to the Court, although the documents are available with the Revenue Divisional Officers/Sub-Collector, which results in the acquittal of the offenders and requested to instruct all the district police officials dealing with bonded labour cases to file the following vital documents before the Sessions Court.

- i. Release certificates issued by the Revenue Divisional Officers
- ii. Enquiry forms
- iii. Executive release order
- iv. Acquaintance of initial rehabilitation amount
- v. Report of the Revenue Divisional Officer and
- vi. Other relevant documents supporting the bonded labour issue

2. All the police officers who are dealing with the cases booked under the Bonded Labour Systems (Abolition) Act, 1976 shall, collect the aforesaid all documents from Revenue department which are essential to prosecute the offenders and shall file them along with the final report / charge sheet.

3. All the Commissioners of Police in Cities and the Superintendents of Police in Districts are instructed to sensitise the Police personnel under their jurisdiction in this regard and issue suitable instructions to them to scrupulously follow the above instructions without fail.

- 2 -

2/4

4. Failure to file the aforesaid documents along with the final report submitted before the court will be viewed seriously and necessary disciplinary action shall be initiated against the officials if any violation is found.

Encl: As stated above

[Signature] 17/12/16
for Director General of Police

To

All Commissioners of Police in Cities
All Superintendent of Police in Districts

Copy to the Additional Director General of Police, SJ & HR, Chennai-4
Copy to all the Zonal IGPs
Copy to all the Range DIGPs

[Signature]
17.12.16



Annexure E

Harassment Protection Letter

Via Hand Delivery/Via RPAD

Date

Subject: Provision to Protect Released Bonded Labourers

Sub-Inspector of Police Station

Police Station

District

Sir,

On the basis of the complaint given by **[insert name of Informant]**, it was found that the following persons were treated as bonded labourers by **[insert names of Perpetrators]**, the operators/owners of the **[insert location details]**.

[Insert names of Victims] are released from the bonded labour system by **[insert name of Executive Magistrate who issued release certificates]** and are going to stay in their native village at **[insert Village details]**.

We apprehend that there may be threat and harassment from either **[insert names of Perpetrators]** or their associates. We request you to provide the victims with appropriate protection, enabling them to live in their village without any fear. If **[insert names of Victims]** come to any harm or become missing, **[insert names of Perpetrators]** or their associates are responsible.

Yours faithfully,

[Insert Signature]

COPIES OF RELEASE CERTIFICATES ATTACHED

[Attach a copy of the Release Certificates issued to the Victims]



Annexure F

Annexure

VIDEO CONFERENCING GUIDELINES ISSUED BY THE HIGH COURT OF DELHI

Guidelines for the Conduct of Court Proceedings between Courts and Remote Sites

Introduction

Video conference facilities enabling audio and visual communication between persons at different locations have now been installed in:

- Delhi High Court
- All the District Courts in Delhi, i.e. Tis Hazari, Patiala House, Karkardooma, Rohini, Dwarka and Saket Courts
- Prisons in Delhi i.e. Tihar and Rohini Prison Complex

Video-conferencing facilities provide Courts in Delhi with the capacity to receive evidence and submissions from witnesses or persons involved in Court proceedings in circumstances where it would be expensive, inconvenient or otherwise not desirable for a person to attend a Court in person. An over-riding factor is that the use of video-conferencing in any particular case must be consistent with furthering the interests of justice and should cause minimal disadvantage to the parties. However, it is for the Court to decide whether evidence should be recorded by video-conferencing.

Even with the advancement of technology, there is a delay of milliseconds between video picture seen and sounds being heard. Allowances appropriate to this time gap need to be made to avoid one participant talking over another.

Microphones set up at the bench, the bar table and at the witness box are highly sensitive. Persons during a video conferencing should assume from the time the video conference is activated until the same is disconnected that microphones are "live" and as such all remarks are audible to the Court.





1. General

1.1 In these guidelines, reference to the 'court point' means the Courtroom or other place where the Court is sitting or the place where Commissioner appointed by the Court to record the evidence by video conference is sitting and the 'remote point' is the place where the person to be examined via video conference is located, for example, a prison.

1.2 Person to be examined includes a person whose deposition or statement is required to be recorded or in whose presence certain proceedings are to be recorded.

1.3 Wherever possible, proceedings by way of video conference shall be conducted as judicial proceedings and the same courtesies and protocols will be observed. All relevant statutory provisions applicable to judicial proceedings including the provisions of the Information Technology Act, 2000 and the Indian Evidence Act, 1872 shall apply to the recording of evidence by video conference.

1.4 Video conferencing facilities can be used in all matters including remands, bail applications and in civil and criminal trials where a witness is located intrastate, interstate, or overseas. However, these guidelines will not apply to proceedings under section 164 of Cr. P.C.

1.5 The guidelines applicable to a Court will *mutatis mutandis* apply to a Local Commissioner appointed by the Court to record the evidence.

2. Appearance by video conference

A Court may either *suo moto* or on application of a party or a witness, direct by a reasoned order that any person shall appear before it or give evidence or make submissions to the Court through video conference.



3. Preparatory arrangements for video conference

3.1 There shall be Co-ordinators both at the court point as well as at the remote point.

3.2 In the High Court, Registrar (Computers) shall be the co-ordinator at the court point.

3.3 In the District Courts, official-in-charge of the Video Conferencing Facility (holding the post of Senior Judicial Assistant/Senior Personal Assistant or above) nominated by the District Judge shall be the co-ordinator at the court point.

3.4 The Co-ordinator at the remote point may be any of the following:-

(i) Where the person to be examined is overseas, the Court may specify the co-ordinator out of the following:-

- (a) the official of Consulate/Embassy of India,
- (b) duly certified Notary Public/ Oath Commissioner,

(ii) Where the person to be examined is in another State/U.T, a judicial Magistrate or any other responsible official as may be deputed by the District Judge concerned or Sub-Divisional Magistrate or any other responsible official as may be deputed by the District Collector concerned,

(iii) Where the person to be examined is in custody, the concerned Jail Superintendent or any other responsible official deputed by him,

(iv) Where the person to be examined is in a hospital, public or private, whether run by the Central Government, the State Government, local bodies or any other person, the Medical Superintendent or In-charge of the said hospital or any other responsible official deputed by him,





(v) Where the person to be examined is a juvenile or a child who is an inmate of an Observation Home/Special Home/Children's Home/ Shelter Home, the Superintendent/Officer In-charge of that Home or any other responsible official deputed by him,

(vi) Where the person to be examined is in Nirmal Chhaya, the Superintendent/Officer In-Charge of the Nirmal Chhaya or any other responsible official deputed by him,

(vii) Wherever a co-ordinator is to be appointed at the remote point under Clause 3.4 sub-Clause (ii), (iii), (iv), (v) & (vi), the Court concerned will make formal request through the District Judge concerned to concerned official.

(viii) In case of any other person, as may be ordered by the Court.

3.5 The co-ordinators at both the points shall ensure that the minimum requirements as mentioned in the Guideline No.4 are in position at the court point and the remote point and shall conduct a test between both the points well in advance, to resolve any technical problem so that the proceedings are conducted without interruption.

3.6 It shall be ensured by the co-ordinator at the remote point that:-

(i) the person to be examined or heard is available and ready at the room earmarked for the video conference at least 30 minutes before the scheduled time.

(ii) no other recording device is permitted except the one installed in the video conferencing room.

(iii) entry into the video conference room is regulated.



3.7 It shall be ensured by the co-ordinator at the court point that the co-ordinator at the remote point has certified copies or soft copies of all or any part of the court record in a sealed cover directed by the Court sufficiently in advance of the scheduled video conference.

3.8 The Court shall order the co-ordinator at the remote point or at the court point wherever it is more convenient, to provide:-

- (i) a translator in case the person to be examined is not conversant with Court language;
- (ii) an expert in sign language in case the person to be examined is speech and/or hearing impaired;
- (iii) for reading of documents in case the person to be examined is visually challenged;
- (iv) an interpreter or special educator, as the case may be, in case the person to be examined is temporarily or permanently mentally or physically disabled.

4. Minimum requisites for video conference

- (i) A desktop or laptop with internet connectivity and printer
- (ii) Device ensuring uninterrupted power supply
- (iii) Video Camera
- (iv) Microphones and speakers
- (v) Display unit
- (vi) Document visualizer
- (vii) Comfortable sitting arrangements ensuring privacy
- (viii) Adequate lighting
- (ix) Insulations as far as possible/proper acoustics





- (x) Digital signatures from licensed certifying authorities for the co-ordinators at the court point and at the remote point

5. **Cost of video conferencing**

5.1 In criminal cases, the expenses of the video conference facility including expenses of preparing soft copies/certified copies of the Court record for sending to the co-ordinator at the remote point and fee payable to translator/interpreter/special educator, as the case may be, and to the co-ordinator at the remote point shall be borne by such party as the Court directs taking into account the Delhi Criminal Courts (Payment of Expenses to Complainant and Witnesses) Rules, 2015.

5.2 In civil cases, as a general rule, the party making the request for recording evidence by video conference shall bear the expenses.

5.3 In other cases, the court may make an order as to expenses as it considers appropriate taking into account rules/instructions regarding payment of expenses to complainant and witnesses as may be prevalent from time to time.

6. **Procedures generally**

6.1 The identity of the person to be examined shall be confirmed by the court with the assistance of the co-ordinator at remote point at the time of recording of the evidence.

6.2 In civil cases, party requesting for recording statement of the person to be examined by video conferencing shall confirm to the Court location of the person, his willingness to be examined by video conferencing, place and facility of such video conferencing.

6.3 In criminal cases, where the person to be examined is a prosecution witness or court witness, the prosecution and where person to be examined is a defence



witness, the defence counsel will confirm to the Court his location, willingness to be examined by video conferencing, place and facility of such video conferencing.

6.4 In case person to be examined is an accused, prosecution will confirm his location at remote point.

6.5 Video conference shall ordinarily take place during the court hours. However, the Court may pass suitable directions with regard to timings of the video conferencing as the circumstances may dictate.

6.6 The record of proceedings including transcription of statement shall be prepared at the court point under supervision of the Court and accordingly authenticated. The soft copy of the transcript digitally signed by the co-ordinator at the court point shall be sent by e-mail through NIC or any other Indian service provider to the remote point where printout of the same will be taken and signed by the deponent. A scanned copy of the statement digitally signed by co-ordinator at the remote point would be sent by e-mail through NIC or any other Indian service provider to the court point. The hard copy would also be sent subsequently, preferably within three days of the recording, by the co-ordinator at the remote point to the court point by courier/mail.

6.7 The Court may, at the request of a person to be examined, or on its own motion, taking into account the best interests of the person to be examined, direct appropriate measures to protect his privacy keeping in mind his age, gender and physical condition.

6.8 Where a party or a lawyer requests that in the course of video-conferencing some privileged communication may have to take place, Court will pass appropriate directions in that regard.





6.9 The audio-visual shall be recorded at the court point. An encrypted master copy with hash value shall be retained in the Court as part of the record. Another copy shall also be stored at any other safe location for backup in the event of any emergency. Transcript of the evidence recorded by the Court shall be given to the parties as per applicable rules. A party may be allowed to view the master copy of the audio video recording retained in the Court on application which shall be decided by the Court consistent with furthering the interests of justice.

6.10 The co-ordinator at the remote point shall be paid such amount as honorarium as may be decided by the Court in consultation with the parties.

6.11 In case any party or his/her authorized person is desirous of being physically present at the remote point at the time of recording of the evidence, it shall be open for such party to make arrangements at party's own costs including for appearance/representation at the remote point subject to orders to the contrary by the Court.

7. **Putting documents to a person at remote point**

If in the course of examination of a person at a remote point by video conference, it is necessary to put a document to him, the Court may permit the document to be put in the following manner:-

- (a) if the document is at the court point, by transmitting a copy of it to the remote point electronically including through a document visualizer and the copy so transmitted being then put to the person;
- (b) if the document is at the remote point, by putting it to the person and transmitting a copy of it to the court point electronically including through a document visualizer. The hard copy would also be sent subsequently to the court point by courier/mail.



8. Persons unconnected with the case

8.1 Third parties may be allowed to be present during video conferencing subject to orders to the contrary, if any, by the Court.

8.2 Where, for any reason, a person unconnected with the case is present at the remote point, then that person shall be identified by the co-ordinator at the remote point at the start of the proceedings and the purpose for his being present explained to the Court.

9. Conduct of proceedings

9.1 Establishment and disconnection of links between the court point and the remote point would be regulated by orders of the Court.

9.2 The Court shall satisfy itself that the person to be examined at the remote point can be seen and heard clearly and similarly that the person to be examined at the remote point can clearly see and hear the Court.

10 Cameras

10.1 The Court shall at all times have the ability to control the camera view at the remote point so that there is an unobstructed view of all the persons present in the room.

10.2 The Court shall have a clear image of each deponent to the extent possible so that the demeanour of such person may be observed.

11. Residuary Clause

Such matters with respect to which no express provision has been made in these guidelines shall be decided by the Court consistent with furthering the interests of justice.





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